

*The*  
**NORTH CAROLINA  
REGISTER**

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**ISSUE DATE: NOVEMBER 1, 1988**

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# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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# NORTH CAROLINA REGISTER



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**NORTH CAROLINA REGISTER**  
*Publication Deadlines and Schedules*  
*(September 1988 - March 1989)*

| Issue<br>Date | Last Day<br>for<br>Filing | Last Day<br>for<br>Electronic<br>Filing | Earliest<br>Date for<br>Public<br>Hearing &<br>Adoption by<br>Agency | *<br>Earliest<br>Effective<br>Date |
|---------------|---------------------------|---|--|------------------------------------|
| *****         | *****                     | *****                                   | *****  | *****                              |
| 09/01/88      | 08/11/88                  | 08/18/88                                | 10/01/88   | 01/01/89                           |
| 09/15/88      | 08/26/88                  | 09/02/88                                | 10/15/88   | 01/01/89                           |
| 10/03/88      | 09/12/88                  | 09/19/88                                | 11/02/88   | 02/01/89                           |
| 10/14/88      | 09/26/88                  | 10/03/88                                | 11/13/88   | 02/01/89                           |
| 11/01/88      | 10/11/88                  | 10/18/88                                | 12/01/88   | 03/01/89                           |
| 11/15/88      | 10/26/88                  | 11/02/88                                | 12/15/88   | 03/01/89                           |
| 12/01/88      | 11/07/88                  | 11/15/88                                | 12/31/88   | 04/01/89                           |
| 12/15/88      | 11/23/88                  | 12/02/88                                | 01/14/89   | 04/01/89                           |
| 01/02/89      | 12/08/88                  | 12/15/88                                | 02/01/89   | 05/01/89                           |
| 01/16/89      | 12/27/88                  | 01/03/89                                | 02/15/89   | 05/01/89                           |
| 02/01/89      | 01/10/89                  | 01/17/89                                | 03/03/89   | 06/01/89                           |
| 02/15/89      | 01/26/89                  | 02/02/89                                | 03/17/89   | 06/01/89                           |
| 03/01/89      | 02/08/89                  | 02/15/89                                | 03/31/89   | 07/01/89                           |
| 03/15/89      | 02/21/89                  | 03/02/89                                | 04/14/89   | 07/01/89                           |

\* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

**CORRECTION TO NOTICE AS PUBLISHED IN THE NORTH CAROLINA REGISTER AT 3:14 NCR 656 SHOULD READ:**

**TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-12 that the N. C. Environmental Management Commission intends to amend rule(s) cited as 15 NCAC 2J .0002.*

*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on November 21, 1988 at Ground Floor Hearing Room, Archdale Bldg., 512 N. Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Any person interested in this matter is invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within ten days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. For more information and copies of the proposed rule, please contact Mr. Paul Wilms, Director, Division of Environmental Management, P. O. Box 27687, Raleigh, NC 27611, (919) 733-7015.*

**VOTING RIGHTS ACT FINAL DECISION LETTER**

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*[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]*

U.S. Department of Justice  
Civil Rights Division

WBR:MAP:CM:rac  
DJ 166-012-3  
W4626

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

October 4, 1988

Robert C. Cogswell, Jr., Esq.  
City Attorney  
P. O. Box 1513  
Fayetteville, North Carolina 28302-1513

Dear Mr. Cogswell:

This refers to the increased compensation for elected officials for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 5, 1988.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

By:

Gerald W. Jones  
Chief, Voting Section

TITLE 2 - DEPARTMENT OF  
AGRICULTURE

*Notice is hereby given in accordance with G.S. 150B-12 that the N. C. Gasoline and Oil Inspection Board intends to amend rule(s) cited as 2 NCAC 42 .0102, .0201, and .0504.*

*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on December 2, 1988 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.*

*Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to N. David Smith, Secretary of the North Carolina Gasoline and Oil Inspection Board, P.O. Box 27647, Raleigh, North Carolina 27611.*

CHAPTER 42 - N. C. GASOLINE AND OIL  
INSPECTION BOARD

SECTION .0100 - PURPOSE AND DEFINITIONS

.0102 DEFINITIONS

Except as otherwise defined in Chapter 119, North Carolina General Statutes, the definitions applicable in this Chapter are as follows:

- (2) "~~Anhydrous denatured ethyl alcohol (ethanol)~~" means nominal 200 proof ethanol to which has been added a maximum of five volumes of approved denaturant(s) to 100 volumes of ethanol and containing not more than 1.25 percent water by weight as determined by ASTM Test Method E-203. "Denatured fuel ethanol" means ethanol meeting the provisions of ASTM D-4806, "Standard Specifications for Denatured Fuel Ethanol to be Blended with Gasolines for Use as an Automotive Spark-Ignition Engine Fuel."
- (9) "Leaded" means any gasoline or gasoline/oxygenate blend which contains not less than 0.05 grams lead per U.S. gallon (0.013 grams lead per liter).
- (16) "Regular" when used as part of a brand name and or as a grade designation for gasoline or gasoline/oxygenate blend shall be construed to mean a leaded regular grade commercial automotive gasoline or gasoline oxygenate blend unless the brand name and or grade designation also contains

the word "Unleaded" or a word or term of equivalent meaning.

- (19) "Unleaded" means any gasoline or ~~blend of gasoline with oxygenates as defined in this Chapter containing gasoline/oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains~~ not more than 0.05 grams lead per U.S. gallon (0.013 grams lead per liter) and not more than 0.005 phosphorus per U.S. gallon (0.0013 grams phosphorous per liter).

Statutory Authority G.S. 119-26.

SECTION .0200 - QUALITY OF LIQUID FUEL  
PRODUCTS

.0201 STANDARD SPECIFICATIONS

(a) ~~Gasoline shall conform to ASTM D-439-85a. The board hereby adopts by reference in accordance with G.S. 150B-14c, ASTM D-4814, "Standard Specification for Automotive Gasoline, Spark-Ignition Engine Fuel" as standard specification for gasoline with the following modifications:~~

- (1) Applications for temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the director. Said applications shall contain evidence satisfactory to the director that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the board at which time the board shall establish the duration of the exception;
- (2) Octane rating shall not be less than the octane index certified on the brand name registration as required by 2 NCAC 42 .0500;
- (3) Reid vapor pressure and vapor/liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification.

(b) Gasoline-oxygenate blends shall conform to ASTM D-439-85a. The board hereby adopts by reference in accordance with G.S. 150B-14c, ASTM D-4814, "Standard Specification for Automotive Gasoline, Spark-Ignition Engine Fuel" as standard specification for gasoline/oxygenate blends with the following modifications:

- (1) A vapor pressure tolerance not exceeding one pound per square inch may be allowed for gasohol, leaded gasohol, and gasoline-oxygenate blends; as determined by the ambient temperature procedure, ASTM D-323-79;
- (2) Vapor-liquid ratio specifications for gasohol, leaded gasohol, and gasoline-oxygenate blends will be waived pending development of appropriate test methods by ASTM and subsequent adoption by the board;
- (3) (2) Reid vapor pressure and vapor/liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification;
- (4) (3) Applications for temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the director. Said applications shall contain evidence satisfactory to the director that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the board at which time the board shall establish the duration of the exception;
- (5) (4) Distillation Range (ASTM D-86) shall be the same as specified for gasoline in (a) of this Rule except the The minimum temperature at 50 percent evaporated shall be 158 degrees F. (70 degrees C.) as determined by ASTM Test Method D-86;
- (6) (5) Octane rating shall not be less than the octane index certified on the brand name registration as required by 2 NCAC 42 .0500;
- (7) (6) Oxygenate Content. Gas-liquid chromatographic procedures will be con-

sidered as official for the determination of oxygenate content.

- (A) Gasohol and leaded gasohol shall contain 10 plus/minus 0.5 volume percent anhydrous denatured fuel ethanol.
- (B) Gasoline-oxygenate blends not otherwise defined in this Chapter, may contain, maximum or minimum as appropriate, the percentage and type of oxygenates as certified on the brand name registration as required by 2 NCAC 42 .0500, subject to compliance with other specifications as provided in this Subparagraph;
- (8) (7) Water tolerance shall be such that no phase separation occurs when subjected to a temperature equal to the lowest expected ambient temperature based on seasonal volatility classifications as specified in ASTM D-439-85a temperatures specified in Table 4, ASTM D-4814.

(c) Diesel motor fuel shall conform to ASTM D-975-81. The board hereby adopts by reference in accordance with G.S. 150B-14c, ASTM D-975, "Standard Specification for Diesel Fuel Oils" as standard specification for diesel motor fuels with the following modifications: modification: for For diesel motor fuel number grade 2-D, the minimum flash point as determined by ( ASTM Test Method D-56 ) of shall be 115 degrees F. (46 degrees C.).

(d) Fuel oil shall conform to ASTM D-396-84. The board hereby adopts by reference in accordance with G.S. 150B-14c, ASTM D-396, "Standard Specification for Fuel Oil" as standard specification for fuel oils.

(e) Kerosene shall conform to The board hereby adopts by reference in accordance with G.S. 150B-14c, ASTM D-3699, "Standard Specification for Kerosene" as standard specification for kerosenes with the following specifications: modification: For grade 2-K, the presence or absence of coloring matter shall in no-way be determinative of whether a substance meets the requirements of this grade of kerosene.

- (1) No. 1-K. A special low sulfur grade kerosene suitable for use in nonflue-connected kerosene burner appliances and for use in wick-fed illuminating lamps, and which shall meet all requirements as set forth in ASTM D-3699-83.
- (2) No. 2-K. A regular grade kerosene suitable for use in flue-connected burner appliances and for use in wick-fed illuminating lamps, and which shall meet all requirements as set forth in ASTM D-3699-83, except that the presence or absence of coloring matter shall in no way be determinative of whether a substance



meets the requirements of this grade of kerosene.

(g) ASTM documents ~~adopt~~ adopted by reference herein are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost as determined by the publisher by contacting ASTM, 1916 Race Street, Philadelphia, PA 19103.

Statutory Authority G.S. 119-26; 150B-14.

## SECTION .0500 - REGISTRATION AND BRANDING

### .0504 REGISTRATION PROVISIONS

(e) The director may establish and maintain a normal prevailing range of quality specifications of motor fuels for similar or customary classifications, grades, or designations of motor fuels intended for the same use or application ~~and in no case shall the octane index be less than 87.~~ For automotive gasolines and gasoline oxygenate blends, the minimum octane index shall be 87 except that for those designated as "Premium" or by a word or term of equivalent meaning, the minimum octane index shall be 91.

Statutory Authority G.S. 119-26.

## TITLE 7 - DEPARTMENT OF CULTURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Cultural Resources, Division of Archives and History intends to amend rule(s) cited as 7 NCAC 4N .0102.*

*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on December 1, 1988 at Room 305, Archives and History-State Library Building, 109 E. Jones Street, Raleigh, N. C.*

*Comment Procedures: Written comments may be submitted by November 28, 1988, to the Division of Archives and History, Room 305, 109 E. Jones Street, Raleigh, N. C. Attn: William S. Price, Jr.*

## CHAPTER 4 - ARCHIVES AND HISTORY

### SUBCHAPTER 4N - HISTORIC SITE REGULATIONS

#### SECTION .0100 - HISTORIC SITE REGULATIONS

#### .0102 ACTIVITIES PROHIBITED ON STATE HISTORIC SITE PROPERTY

(15) bathe, wade, or swim in any waters in any state historic site, except at such times and in such places as the department may designate as swimming areas. In this Rule, "swimming area" means any beach or water area designated by the department as a place for swimming, wading, or bathing.

Statutory Authority G.S. 121-4(8); 121-4(9); 143B-62(2)d.

## TITLE 11 - DEPARTMENT OF INSURANCE

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Insurance intends to amend rule(s) cited as 11 NCAC 4 .0115 - .0118, .0312 - .0315, .0319, .0320, .0416, .0418, .0419, .0421, .0423; and adopt rule(s) cited as 11 NCAC 4 .0119, .0424 - .0429.*

*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on December 1, 1988 at Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Comment Procedures: Written comments should be directed to Tony Higgins at P. O. Box 26387, Raleigh, N.C. 27611. He may be reached by telephone at (919) 733-2004. Oral comments may be made at the hearing.*

## CHAPTER 4 - CONSUMER SERVICES DIVISION

### SECTION .0100 - GENERAL PROVISIONS

#### .0115 DIVISION PROCEDURES

(a) ~~Administrative Personnel:~~ There shall be one assistant deputy commissioner whose duties shall include but not be limited to the provision of supervision to section supervisors and the complaint analysts. Also, the assistant deputy commissioner handles some of the more complicated complaints or inquiries, conducts special research and studies and advises the deputy commissioner as to policies, principles and practices involved in the operation of insurance companies and insurance contracts.

(b) ~~Section Supervisors:~~ There shall be section supervisors for the division whose duties shall include but not be limited to assignment of

complaints and inquiries (cases) to analysts, review and analysis of cases and obtaining technical advice from the deputy commissioner, assistant deputy commissioner or other divisions when necessary to resolve a case.

(c) **Complaint Analysts.** There shall be complaint analysts for the division whose duties shall include but not be limited to receiving and compiling all information related to the case, contacting the insurer or its representative involved in the inquiry or against whom the complaint has been lodged, requesting a report on the matter, and acknowledging and responding to the reports, when necessary. Analysts shall also have the responsibility of reviewing all information and recommending a course of action which will resolve the complaint or inquiry, and reporting same to the party who originated the complaint or inquiry.

(d) **Market Conduct Analysts.** There shall be market conduct analysts for the division whose duties shall include field examination, investigation, analysis, and evaluation of domestic or foreign insurers' or their representatives' market conduct pursuant to the market conduct examination program of the National Association of Insurance Commissioners.

(e) **(a) Complaint Handling Procedure.** Complaints will be processed in the following manner:

- (1) Analyst will request explanation from company, agent or adjuster;
- (2) If he finds that the complaint has been improperly handled, then he will recommend that proper action be taken;
- (3) If the issue is not resolved, the deputy commissioner may arrange a conference with company representatives to resolve the problem.

(f) **(b) Hearings.** If a conference does not resolve a disputed issue, the deputy commissioner may recommend to the commissioner that appropriate legal action be taken to insure compliance with the statutes, rules and regulations administered by the department. Such legal action may include the convening of a public hearing to review, in light of the conduct which occasioned the complaint, the necessity of entering an order against the party complained of. Orders entered as a result of proven violations of regulations which construe provisions of Article 3A of Chapter 58 of the General Statutes shall be cease and desist orders. Orders entered as a result of proven violations of a statute which specifies the penalty for the violation thereof shall be as prescribed by the statute.

(g) **(c) Complaints Represented by Counsel.** The division will not investigate a complaint which is also the subject matter of a pending

lawsuit filed by an attorney representing the complainant. If a lawsuit has not been filed but the complainant has retained an attorney, the division will investigate the complaint according to its normal procedures provided it has first obtained the attorney's consent.

*Statutory Authority G.S. 57-1; 57-4; 57B-4; 57B-18; 58-9; 58-9.2; 58-18; 58-25; 58-25.1; 58-26; 58-27; 58-39; 58-618.*

#### .0116 INQUIRIES AND INFORMATION

The division maintains facilities and personnel to receive inquiries and complaints by telephone, letter or personal visit. The telephone number of the division is (919) 733-2032. The mailing address of the division is: North Carolina Department of Insurance, Post Office Box 26387, Raleigh, North Carolina 27611, (Attention: Consumer Services Division). The street address of the division is: Room 3078, 3040 Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

*Statutory Authority G.S. 58-7.3; 58-9.*

#### .0117 STATEMENT OF ACTION

(a) When an insurer denies a claim after receiving written notice thereof from the claimant sufficiently informative to enable the insurer to identify the specific coverage involved, the insurer's denial shall be in writing and, ~~in connection with first-party claims, shall reasonably explain the basis in the policy in relation to the facts for the denial.~~ shall cite specific policy provisions or legal basis relied upon in denying the claim.

(b) When an insurer offers to settle a claim after receiving written notice thereof from the claimant sufficiently informative to enable the insurer to identify the specific coverage involved, the insurer's offer of compromise settlement shall be in writing and, ~~in connection with first-party claims, shall reasonably explain the basis in the insurance policy in relation to the facts for the offer of compromise settlement.~~ and shall cite specific policy provision or legal basis relied upon in support of the compromise.

*Statutory Authority G.S. 57-4; 57B-12; 57B-18; 58-9; 58-39; 58-54.4.*

#### .0118 INSURANCE CARRIERS AS LENDERS

Any lender who offers an insurance product to a consumer, either directly or indirectly through a subsidiary or affiliate in conjunction with an extension of credit shall inform the consumer of the protections afforded by G.S. 58-51.5. Nothing in this Regulation shall limit the right of the

lender, for purposes of protecting the interest of the lender, to require insurance in connection with a loan. This Regulation shall not apply where the extension of credit arises out of a life insurance contract itself or where the extension of credit is subject to the provisions of Regulation Z (12 CFR 226), or other federal statutes or regulations requiring comparable disclosures.

*Statutory Authority G.S. 58-9(2); 58-51.5; 58-54.*

**.0119 INSURER DEFINED**

For the purposes of this Chapter "insurer" shall mean any entity governed by the provisions of Chapter 57, 57B and 58.

*Statutory Authority G.S. 57-1; 57B-18; 58-9.*

**SECTION .0300 - LIFE: ACCIDENT AND HEALTH**

**.0312 INFORMATION USED IN CLAIM SETTLEMENTS**

(a) Any information (including medical information) used in whole or in part as the basis of settling a life, accident health or disability claim shall be furnished to the department as necessary in connection with specific complaints and inquiries. As used in this Section, "furnished" shall include either mailing claim settlement information to the department or exhibiting such information to the appropriate ~~complaint analyst~~ division personnel at a time and place ~~convenient set by to the analyst~~ division personnel.

(b) To the extent permitted by law, the department shall treat medical information as confidential.

*Statutory Authority G.S. 57-4; 57-10; 57B-12; 57B-18; 58-9; 58-11; 58-16; 58-25.1; 58-26; 58-27; 58-54.5.*

**.0313 PROVISIONS OF CONTRACTS**

In order to prevent unfair discrimination among insureds, the following phrases and provisions commonly found in life, accident, health and disability contracts, if not expressly defined in such contracts, shall be construed by the department in the following manner:

(1) House Confinement. As used in disability contracts, "house confinement" shall be considered a description of the extent of illness rather than a restriction of the insured's conduct or activities. The insured's participation in activities which are considered by his physician to be for therapeutic rather than for business or personal reasons shall not prevent recovery under such disability contracts.

(2) Offsets Against Social Security Awards. As used in disability contracts, "offsets against social security awards" shall be construed as permitting the ~~insurance company~~ insurer to offset only the amount of the original social security award and not subsequent cost of living increases.

(3) Regular Care and Attendance of a Physician. As used in life, accident and health and disability policies, "regular care and attendance of a physician" shall not be construed to require insureds to see or be under the care of a physician on a regular basis if it can be shown that the insured has reached his maximum point of recovery yet is still disabled under the terms of the insurance contract. This requirement shall not, however, restrict the right of the company, at company expense, to periodically examine or cause to have examined the insured according to the terms of the contract of insurance.

(4) Premature Baby. A premature baby shall not be considered a well baby. The protection afforded newborn infants under G.S. 58-251.4 shall be provided to premature babies.

(5) Medical Necessity. "Medical necessity" shall be construed as including treatment which restores not only the insured's physical but also his mental well-being. As used in this Section, "restoration of mental well-being" does not require coverage of psychiatric disorders when such disorders are excluded under the express terms of the contract.

(6) Sound Health. The question, "Are you in sound health?" shall be considered ambiguous, and therefore answers to that question on an insurance application shall not be used as the basis for rescission of a policy or denial of a claim.

*Statutory Authority G.S. 57-1; 57-4; 57B-8; 57B-12; 57B-18; 58-9; 58-54; 58-54.4; 58-249;*

**.0314 PREMIUM NOTICES: PAYMENTS AND REFUNDS**

The commissioner shall consider an unfair trade practice the failure by an ~~insurance company~~ insurer to adhere to any of the following procedures concerning premium notices, payments and refunds on life, accident, health, or disability policies when such failure is so frequent as to indicate a general business practice:

(1) Premium Notices. Any ~~insurance company~~ insurer which makes a practice of sending premium notices ~~should~~ shall maintain re-

cords sufficient to show that it mailed or otherwise delivered such notice to an individual insured or policy owner.

- (2) **Timely Remittance.** Insurance companies ~~should~~ shall use date of mailing, rather than date of receipt, to determine whether the insured has made timely remittance of premium, provided the premium payment is received within ~~three~~ seven days after either the termination date of the policy or the last day of its grace period, whichever is later.
- (3) **Right to Return Policy.** When such right is given by contract or statute, ~~no insurance company insurer~~ insurer ~~should~~ shall abridge or frustrate the right of the insured to return a policy within 10 days after he receives it for a full refund of premiums paid. Evidence of such delivery shall be signed statements from the policyowner of the date of delivery or copies of signed certified mail receipt.
- (4) **Unearned Premium Refund.** When such right is given by contract or statute, ~~no insurance company insurer~~ insurer ~~should~~ shall abridge or frustrate the right of the insured to receive a refund of unearned premium.
- (5) **Unearned Premium on Health Policies.** When an insured covered by an accident, health or disability policy dies during the term of the policy, his ~~insurance company~~ insurer ~~should~~ shall refund the unearned premium to his estate.
- (6) **Commingling.** No licensed person may commingle premiums, insurance deposits or other such funds. Such funds are considered to have been received in a fiduciary capacity on behalf of policyowners and must be immediately forwarded to the proper insurers or be deposited into an authorized account which is separate and distinct from the person's operating and/or personal accounts. The account shall be used to receive and disburse premiums paid for insurers, return premiums to policyowners, bank charges for the account and transfer of earned commissions or fees.

*Statutory Authority G.S. 57-4; 57B-8; 57B-12; 57B-18; 58-9; 58-26; 58-54.9, 58-250.1; 58-251.1.*

#### .0315 ISSUANCE OF CONTRACTS

The commissioner shall consider an unfair trade practice the failure by an ~~insurance company~~ insurer to adhere to any of the following procedures with respect to the issuance of life, accident, health, or disability policies when such failure is so frequent as to indicate a general business practice:

- (1) **Policies to Cover Newborn Infants.** No health application or requirements of insurability ~~should~~ shall be used to circumvent the requirements of North Carolina General Statute 58-251.4.
- (2) **Rating of Guaranteed Issue Coverages.** There ~~should~~ shall be no rating of policies where guaranteed issue at a specified rate is represented. When only guaranteed issue is represented, the insurer ~~should~~ shall disclose in writing to any applicant subjected to individual rating the fact that his rate deviates from the standard rates for such coverage. This Section shall not apply to individual policies issued to employees under a contract between their employer and his insurer.
- (3) **Replacement of Existing Coverage.** With respect to individual accident, health and disability coverages, when an insurer's agent, by misrepresenting the new policy as a supplement or addition to the existing policy, induces an insured to assent to the replacement of his existing policy with a new policy ~~from the same insurer,~~ new waiting periods ~~should~~ shall be decreased by the amount of time coverage was afforded under the existing policy.
- (4) **Continuous Coverage Under Credit Life, Accident and Health Policies.** In a series of credit life or credit accident and health insurance transactions where the insured, the lender, and the ~~insurance company~~ insurer are the same and where is no appreciable lapse in coverage between transactions, the waiting periods of the insurance agreements ~~should~~ shall run from the date of the first insurance contract, at least to the extent of the amount and term of the indebtedness outstanding at the time of renewal or refinancing.

*Statutory Authority G.S. 57-4; 57B-8; 57B-12; 57B-18; 58-9; 58-44.4; 58-54; 58-54.9; 58-251.4; 58-624.*

#### .0319 CLAIMS PRACTICES: LIFE: ACCIDENT AND HEALTH INSURANCE

The commissioner shall consider as prima facie violative of G.S. 58-54.4(11) the failure by an ~~insurance company~~ insurer to adhere to the following procedures concerning settlement of life, accident, health and disability claims when such failure is so frequent as to indicate a general business practice:

- (1) **Examining Physician's Opinion.** When the patient's health is in question, an insurer ~~should~~ shall give greater weight to the opinion of a physician who has examined the

patient than to the opinion of a physician who has not examined the patient and whose opinion is based solely on a review of the examining physician's notes or reports. As used in this Section, "examination of the patient" shall include the interpretation by a specialist of the results of diagnostic tests performed on the patient by others.

- (2) Settlement Offers. Initial offers of settlement or compromise made by an insurer or its representative ~~should~~ shall remain open for a reasonable period of time.
- (3) Multiple Health Impairments. When an insured is confined to the hospital with multiple health impairments some of which may be excluded from coverage, the insurer or its representative ~~should~~ shall make pro rata payments where treatment for excluded conditions can be separated.
- (4) Assignment of Benefits. If an accident, health or disability contract does not prohibit assignment of benefits and a proper assignment (including notice to the insurer prior to the payment of the claim) is made, the insurer ~~should~~ shall honor the assignment even though it may have erroneously paid the insured. Submission of a completed claims form G33II and its successor(s) indicating that an assignment is on file ~~should~~ shall be treated as though it were submission of the actual assignment.
- (5) Claim Status Reports. If benefits claimed under an accident, health or disability contract have not been paid within 30 days after receipt of the initial claim by the insurer, the insurer shall at that time mail a claim status report to the insured.

*Statutory Authority G.S. 57-1; 57-4; 57B-12; 57B-18; 58-9; 58-54.4.*

#### **.0320 STUDENT LOANS**

Whenever a life ~~insurance company~~ insurer offers an insurance product that has associated with it the possibility of that guaranteed student loan through the Federal Higher Education Act in connection with the solicitation or sale of the life insurance product, said agent of company and applicant shall execute a form to be approved by the department. Said form shall set out the rights of the applicant under General Statute 58-51.5, and, among other things, also shall state that the purchase of life insurance is not necessary to obtain a federal guaranteed student loan and that information on alternative sources of such loans can be had by contacting student finance officers at institutions of higher learning. Once this form is executed, one copy of the same shall be left

with the applicant and the insurance carrier, issuing the insurance product, shall keep a copy of the form in ~~their~~ its records for a period of at least three years.

*Statutory Authority G.S. 58-9; 58-51.5; 58-54.*

### **SECTION .0400 - PROPERTY AND LIABILITY**

#### **.0416 BILLING PROCEDURES FOR AUTOMOBILE INSURANCE**

(a) With respect to new business, an insurer shall take no more than 90 days from the effective date of the policy to make any investigation other than review of the initial application and to bill the insured for proper classification or sub-classification.

(b) With respect to renewal business, an insurer shall not bill for any additional premium after the renewal quotation is made (for any condition which existed at the time of renewal and which is on the driver's motor vehicle record). ~~unless the insured does not provide complete information necessary to underwrite the policy or makes an effort to withhold rating information or unless the billing is made to correct a clerical error.~~

(c) With respect to renewal business, if the insured does not provide complete rating information necessary to underwrite the policy or makes an effort to withhold rating information, the insurer shall take no more than 90 days from the effective date of the renewal to make inquiry of the insured, to make any other investigation and to bill the insured for proper classification and sub-classification.

(d) When an insurer obtains information from sources other than the Department of Motor Vehicles for use in underwriting an automobile policy and the insured alleges that such information is incorrect, the insurer shall verify the accuracy of such information.

(e) ~~Unearned premium refunds on auto liability and physical damage policies shall be determined from the date the consumer gives direct notice to a company or an agent of the company of such cancellation. effective date of cancellation requested by the insured.~~ In the case of physical damage insurance where there is a loss payee, the effective date of cancellation for the purposes of determining unearned premium refund shall be 10 days from the date cancellation notice was given directly to a company or a company's agent. ~~However, if the consumer can show proof that within the 10 day period in this Rule where cancellation involves a loss payee; that that the consumer had obtained replacement physical damage coverage which included the loss payee, then determination of the cancellation date for~~

purposes of determining unearned premium refund shall be had, from the last date of any lapse in coverage for the loss payee during the 40 day time set out in this Rule, or, in the case of no lapse, shall be determined as if no loss payee was involved.

*Statutory Authority G.S. 58-9; 58-248.34.*

#### .0417 DRIVE-IN CLAIM SERVICE FACILITIES

No insurer shall require any claimant to use a drive-in claim service operated by the insurer. The claimant's voluntary utilization of a drive-in claim service shall not prejudice the right of either party to obtain independent appraisals and negotiate settlement on the basis of such appraisals.

*Statutory Authority G.S. 58-9; 58-54.4;*

#### .0418 TOTAL LOSSES ON MOTOR VEHICLES

The commissioner shall consider as prima facie violative of G.S. 58-54.4(11) the failure by an insurer to adhere to the following procedures concerning settlement of covered "total loss" motor vehicle claims ~~submitted by first party claimants~~ when such failure is so frequent as to indicate a general business practice:

- (1) If the insurer and the claimant are initially unable to reach an agreement as to the value of the vehicle, the insurer ~~should~~ shall base any further settlement offer not only on published national average values of similar vehicles, but also on the value of the vehicle in the local market. Local market value ~~should~~ shall be determined by using either the local market price of a comparable vehicle or, if no comparable vehicle can be found, quotations from at least two qualified dealers within the local market area who have actually inspected the damage vehicle. Additionally, if the claimant represents that the vehicle actually owned by him was in better than average condition, the insurer ~~should~~ shall give due consideration to the condition of the claimant's vehicle prior to the accident.
- (2) Where the insurer has the right to elect to replace the vehicle and does so elect, the replacement vehicle ~~should~~ shall be available without delay, similar to the lost vehicle, and paid for by the insurer, subject only to the deductible and to the value of any enhancements acceptable to the insured.
- (3) If the insurer makes a deduction for the salvage value of a "total loss" vehicle retained by the claimant, the insurer, if so re-

quested by the claimant, ~~should~~ shall furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted. The insurer shall be responsible for all reasonable towing and storage charges and no insurer shall abandon the salvage of a motor vehicle to a towing and/or storage service without the agreed permission of the service involved. In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such charges shall be payable jointly to the owner and the towing/storage service.

- (4) If a written statement is requested by the claimant, a total loss payment by an insurer ~~should~~ shall be accompanied by a written statement listing the estimates, evaluations and deductions used in calculating the payment, if any, and the source of these values.
- (5) When a motor vehicle is damaged ~~in~~ an amount which equals or exceeds ~~75~~ 60 percent of the preaccident actual cash value, an insurance carrier, upon the request of the owner of the vehicle, shall "total loss" the automobile by paying the insured the preaccident value, and; in return, receiving possession of the legal title of the salvage of said automobile. At the election of the insured, or in those circumstances where the insurance carrier will be unable to obtain an unencumbered title to the damaged vehicle; then the insurance carrier shall have the right to deduct the value of the salvage of the total loss from the actual value of the vehicle and leave such salvage with the insured; subject to the insurance carrier abiding by Subparagraph (3) of this Regulation.

*Statutory Authority G.S. 58-9; 58-54.4.*

#### .0419 MOTOR VEHICLE REPAIR ESTIMATES

The commissioner shall consider as prima facie violative of G.S. 58-54.4(11) the failure by an insurer to adhere to the following procedures concerning repair estimates on covered motor vehicle damage claims ~~submitted by first party claimants~~ when such failure is so frequent as to indicate a general business practice:

- (1) If the insurer requires the claimant to obtain more than two estimates of property damage, the cost, if any, of such additional estimates ~~should~~ shall be borne by the insurer.
- (2) No insurer ~~should~~ shall refuse to inspect the damaged vehicle if a personal inspection is requested by the claimant. However, if the damaged vehicle is situated other than where

it is normally used or cannot easily be moved, the insurer may satisfy the requirements of this Section by having a competent local appraiser inspect the damaged vehicle.

- (3) When the insurer elects to have the claimant's property repaired, the insurer ~~should~~ shall, if so requested by the claimant, furnish the claimant with a legible front and back copy of its estimate. This estimate ~~should~~ shall contain the name and address of the insurer and the name and address of the repair service making the estimate. If there is a dispute concerning pre-existing damage to the vehicle which the insurer does not intend to have repaired, the extent of such damage ~~should~~ shall be clearly stated in the estimate.
- (4) No insurer ~~should~~ shall require a claimant to utilize a particular repair service.
- (5) No insurer shall refuse to provide the claimant with copies of an estimate it uses to offer a settlement.

*Statutory Authority G.S. 58-9; 58-54.4.*

#### **.0421 HANDLING OF LOSS AND CLAIM PAYMENTS**

The commissioner shall consider as prima facie violative of G.S. 58-39 and 58-54.4(11) failure by an insurer to adhere to the following procedures concerning loss and claim payments when such failure is so frequent as to indicate a general business practice:

- (1) Loss and claim payments ~~should~~ shall be mailed or otherwise delivered ~~promptly~~ after the claim is settled.
- (2) Unless the insured consents, no insurer ~~should~~ shall deduct from a loss or claim payment made under one policy premiums owed by the insured on another policy.
- (3) No insurer ~~should~~ shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.
- (4) If a release or full payment of claim is executed by an insured or claimant, involving a repair to a motor vehicle, prior to or at the time of the repair, it shall not bar the right of the claimant to promptly assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the vehicle or a claim for diminished value, directly caused by the accident which could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair for diminished value and 30 days after discovery of un-

known damage shall be considered promptly asserted.

- (5) Except in the total loss situations, the insurer shall be liable for the full cost of agreed upon repairs less policy deductibles.

*Statutory Authority G.S. 58-9; 58-39; 58-54.4.*

#### **.0423 ETHICAL STANDARDS**

(a) Every ~~agency~~, agent, limited representative, broker, adjuster, appraiser, or other insurer's representative shall, when in contact with the public:

- (1) promptly identify himself and his occupation;
- (2) carry the license issued to him by the Department of Insurance while performing his duties and display it upon request to any insured or claimant, any repairer at which he is investigating a claim or loss, any department representative, or any other person with whom he has contact while performing his duties;
- (3) conduct himself in such a manner as to inspire confidence by fair and honorable dealings.

(b) No adjuster or appraiser shall:

- (1) recommend the utilization of a particular motor vehicle repair service without clearly informing the claimant that he is under no obligation to use the recommended repair service and may use the service of his choice;
- (2) accept any gratuity or other form of remuneration from a repair service for recommending that repair service to claimants;
- (3) purchase salvage from a ~~first-party~~ claimant whose claim he is adjusting or appraising without first disclosing to the claimant the nature of his interest in the transaction;
- (4) ~~intimidate~~ intimidate or discourage any claimant from seeking legal advice and counsel by withdrawing and reducing a settlement offer previously tendered to the claimant or threatening to do so if the claimant seeks legal advice or counsel. No adjuster shall advise a claimant of the advisability of seeking or not seeking legal counsel nor shall recommend any legal counsel to any claimant under any circumstance.

*Statutory Authority G.S. 57-4; 58-9; 58-54(4); 58-57; 58-611; 58-614; 58-615.*

#### **.0424 PURPOSE**



The purpose of this Rule is to set forth standards for prompt, fair, and equitable settlements of motor vehicle physical damage insurance claims with regard to the use of after market parts.

*Statutory Authority G.S. 58-9.*

#### **.0425 DEFINITIONS**

As used in this Section the following terms shall be construed as follows:

- (1) "After market part" means a part made by a nonoriginal manufacturer.
- (2) "Insurer" includes any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.
- (3) "Nonoriginal manufacturer" means any manufacturer other than the original manufacturer of a part.
- (4) "Part" means a sheet metal or plastic part that generally is a component of the exterior of a motor vehicle, including an inner or outer panel.

*Statutory Authority G.S. 58-9.*

#### **.0426 IDENTIFICATION**

Every after market part that is subject to this Rule and that is manufactured after November 1, 1988, shall carry sufficient permanent identification of its manufacturer. Such identification shall be accessible, to the extent physically possible, after installation.

*Statutory Authority G.S. 58-9.*

#### **.0427 LIKE KIND AND QUALITY**

No insurer shall require the use of an after market part in the repair of a motor vehicle unless the after market part is at least equal to the original part in terms of fit, quality, and performance. Insurers specifying the use of after market parts shall consider the costs of any modifications that may become necessary when making repairs.

*Statutory Authority G.S. 58-9.*

#### **.0428 DISCLOSURE REQUIREMENTS**

(a) Every insurer that writes motor vehicle physical damage insurance in this state and that intends to require or specify the use of after market parts must disclose to its policyholders in writing, either in the policy or on a sticker attached thereto, the following information in no smaller print than 10 point type:

IN THE REPAIR OF YOUR COVERED AUTO UNDER THE PHYSICAL DAMAGE COVERAGE PROVISIONS OF THIS POLICY, WE MAY REQUIRE OR SPECIFY THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. THESE PARTS ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, AND PERFORMANCE TO THE ORIGINAL MANUFACTURER PARTS THEY REPLACE.

- (b) An insurer must disclose to a claimant in writing, either on the estimate or on a separate document attached to the estimate, the following information in no smaller print than 10 point type:

THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, AND PERFORMANCE TO THE ORIGINAL MANUFACTURER PARTS THEY ARE REPLACING.

All after market parts installed on a motor vehicle shall be clearly identified on the estimate and invoice for such repair.

*Statutory Authority G.S. 58-9.*

#### **.0429 ENFORCEMENT**

A violation of this Rule is deemed by the commissioner to be an unfair trade practice under Article 3A of General Statute Chapter 58.

*Statutory Authority G.S. 58-9.*

### **TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Environmental Management intends to adopt rule(s) cited as 15 NCAC 2M .0101 - .0802.*



*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 2:00 p.m. on December 1, 1988 at Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC.*

*Comment Procedures: Any person or organization desiring to make oral comments at the hearing should register to do so at the hearing. Statements will be limited to 10 minutes and one typewritten copy of any such statement should be submitted to the panel conducting the hearing. Any additional comments on the rules should be forwarded to the Division of Environmental Management by December 1, 1988:*

*Coy M. Batten,  
NRCD, P.O. Box 27687  
Raleigh, NC 27611,  
(919) 733-6900.*

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2M - NORTH CAROLINA WATER POLLUTION CONTROL REVOLVING FUND

#### SECTION .0100 - GENERAL PROVISIONS

##### .0101 PURPOSE

(a) For the purposes of this Chapter, the "Final Initial Guidance for State Revolving Funds" published by the United States Environmental Protection Agency in January 1988 is hereby adopted by reference to include later amendments pursuant to G.S. 150B-14(c).

(b) Loans for wastewater treatment facilities and interceptor sewers from the Water Pollution Control Revolving Fund established by the North Carolina Clean Water Revolving Fund Grant Act of 1987, G.S. 159G, shall be made in accordance with this Chapter.

*Statutory Authority G.S. 150B-14(c); 159G-15.*

##### .0102 DEFINITIONS

In addition to the definitions in G.S. 159G-3, the following definitions will apply to this Chapter:

- (1) "Act" means North Carolina Clean Water Revolving Loan and Grant Act of 1987, G.S. 159G.
- (2) "Award" means the offer by the receiving agency to enter into a loan commitment for a specified amount.

- (3) "Award of contract" means the award by the loan recipient to a contractor of a contract to construct the project as bid.
- (4) "Bid" means the amount of money for which a contractor offers to construct a project.
- (5) "Contingency costs" means unforeseen costs or situations not included in the estimate of project costs.
- (6) "Commitment" means a binding agreement to pay loan funds at intervals as expenses are incurred.
- (7) "Date of Completion" means the date on which operations of the treatment works are initiated or capable of being initiated, whichever is earlier.
- (8) "Environmental Protection Agency" means the Federal agency established pursuant to Reorganization Plan No. 3 of 1970, effective December 1, 1970.
- (9) "Federal capitalization grant" means a grant by the Environmental Protection Agency to the state for the purpose of providing loan funds to finance publicly owned wastewater facilities.
- (10) "Federal Clean Water Act" (CWA) means the Act of Congress designated as P.L. 92-500, approved October 18, 1972, as amended from time to time.
- (11) "Inspection" means inspection or inspections of a project to determine percentage completion of the project; conformance with plans and specifications; and compliance with applicable federal, state, and local laws.
- (12) "Intended Use Plan" means an annual plan to identify the proposed uses of the amounts available in the Water Pollution Control Revolving Fund.
- (13) "Project" means the work described in the application for a loan under this Chapter.
- (14) "Receiving Agency" means the Construction Grants Section of the Division of Environmental Management.

*Statutory Authority G.S. 159G-3; 159G-15.*

##### .0103 PROCEDURES

Operating procedures for loans made from the Water Pollution Control Revolving Fund have been developed according to Federal guidelines and are maintained and implemented by the receiving agency.

*Statutory Authority G.S. 159G-5(c).*

#### SECTION .0200 - APPLICABLE ACTIVITIES

**.0201 LOAN ACTIVITIES**

(a) Loans shall be available for the construction of publicly owned wastewater treatment works that appear on the state's priority list and as they are defined in Section 212 of the Federal Clean Water Act, except for wastewater collection sewers.

(b) Loans may be available for implementation of a non-point source pollution control management program under Section 319 of the Federal Clean Water Act; and

(c) Loans may be available for development and implementation of an estuary conservation and management plan under Section 320 of the Federal Clean Water Act.

*Statutory Authority G.S. 159G-5(c); 159G-15.*

**.0202 ADMINISTRATIVE EXPENSES**

(a) Funds in the Water Pollution Control Revolving Fund account shall be used for the reasonable costs of administering the fund, not to exceed four percent of the Federal capitalization grant award received by the account. These funds shall be used for this purpose alone, and may accrue until expended for administrative purposes.

(b) Agreement to a debt instrument by loan applicants shall include the payment of a two percent closing fee. These funds shall accrue, to be used only for the reasonable costs of administering the Water Pollution Control Revolving Fund.

*Statutory Authority G.S. 159G-5(c); 159G-6(d); 159G-15.*

**SECTION .0300 - ELIGIBILITY REQUIREMENTS**

**.0301 ELIGIBLE PROJECT COSTS**

Loans to local units of government for the construction of publicly owned wastewater projects may be up to 100 percent of allowable project costs as defined in Section 212 of the CWA, being limited only to the following:

- (1) costs necessary to meet permit limits;
- (2) costs necessary to meet twenty years' domestic growth;
- (3) costs to provide for 10 percent unspecified industrial growth; and
- (4) contingency costs to represent 10 percent of the estimated construction costs.

*Statutory Authority G.S. 159G-5(c); 159G-15.*

**.0302 LIMITATION OF DOUBLE BENEFITS**

(a) A project which is receiving a Federal construction grant under 201(g) of the Federal Clean

Water Act is prohibited from receiving a loan from the Water Pollution Control Revolving fund for the non-Federal share of the project's costs.

(b) Loans may be made for subsequent phases or segments of wastewater facilities that previously received Federal grant assistance for earlier phases or segments of the same facility.

(c) Loans may also be made to cover ineligible portions of Federal grant projects such as reserve capacity, major rehabilitation, or advanced treatment components declared grant ineligible.

*Statutory Authority G.S. 159G-5(c); 159G-15.*

**.0303 LIMITATION OF LOANS**

The maximum principal amount of loan made to any one local government unit during any fiscal year shall be seven and one-half million dollars (\$7,500,000).

*Statutory Authority G.S. 159G-5(c); 159G-15.*

**SECTION .0400 - APPLICATIONS**

**.0401 APPLICATION FILING DEADLINES**

Applications for loans made from the Water Pollution Control Revolving Fund must be postmarked or delivered to the Division of Environmental Management on or before March 31 of each year, in order to be approved for loan funds available during the following fiscal year. Applications must be sufficiently complete and contain adequate information to permit the agency to establish realistic schedules and project costs. Any application that does not contain such sufficient information shall be by-passed for that review period.

*Statutory Authority G.S. 159G-5(c); 159G-8; 159G-15.*

**.0402 GENERAL PROVISIONS**

(a) Applications for loans under this Chapter shall be submitted on the appropriate forms and accompanied by all documentation, assurances and other information called for in the instructions for completing and filing applications. Information concerning any grant or loan funds from any other source that the applicant has applied for or received for the project shall be disclosed on the application.

(b) An applicant shall furnish information in addition to or supplemental to the information contained in its application and supporting documentation upon request by the receiving agency.

(c) Any application that does not contain information sufficient to permit the receiving agency to review and approve the project for inclusion on the Intended Use Plan may be bypassed.

(d) An application may not be filed with the receiving agency after the award of contract on a project.

(e) An application may be withdrawn from consideration upon request of the applicant, but if resubmitted shall be considered as a new application.

*Statutory Authority G.S. 159G-8; 159G-9; 159G-15.*

#### **.0403 PROJECT SCHEDULE AND RESOLUTION**

(a) Every application shall be accompanied by a project schedule which specifies dates for milestone events including submission of a facility plan, construction drawings and specifications, a draft user charge system and sewer use ordinance, proposed dates for bid tabulation and award, a construction start date, and a proposed project completion date.

(b) Every application shall be accompanied by an adopted resolution as required by G.S. 159G-9(3) stating that the unit of government has complied or will substantially comply with all applicable federal, state and local laws or rules. Such resolution shall be certified or attested to as a true and correct copy as adopted.

*Statutory Authority G.S. 159G-5(c); 159G-9; 159G-15.*

#### **SECTION .0500 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS**

##### **.0501 GENERAL CRITERIA**

(a) In determining the priority to be assigned each eligible application, the Environmental Management Commission will give consideration to the following factors:

- (1) Consideration shall be given to all projects submitting applications for loans for wastewater treatment systems under the Act as per 159G-8.
- (2) Primary consideration shall be given to the first use of the funds for the enforceable requirements of the Federal Clean Water Act. This injunction applies to the use of funds from the Federal capitalization grant, the state match, and the repayment of the first loans awarded from the Water Pollution Control Revolving Fund.
- (3) Consideration shall also be given to the specific statutory requirements of the

Federal Clean Water Act for loans made for projects constructed in whole or in part with funds made directly available by the Federal capitalization grant.

- (4) Consideration shall also be given to applicable cross cutting Federal authorities.

(b) The categorical elements and items to be considered in assigning priorities to each application for which loan funds are sought, and the points to be awarded to each categorical element and item, are set forth in 15 NCAC 2F, .0102(b)(1)-(3), and .0103.

*Statutory Authority G.S. 159G-5; 159G-8; 159G-15.*

#### **SECTION .0600 - LOAN AWARD: COMMITMENT AND DISBURSEMENT OF LOANS**

##### **.0601 DETERMINATION OF LOAN AWARDS**

(a) All funds appropriated to the Water Pollution Control Revolving Fund account under this Chapter for a fiscal year will be available that particular fiscal year.

(b) Loans principal repayments and interest payments from loans made from the Water Pollution Control Revolving Fund account, will accrue to this account. These funds, along with interest earned on them, will be available as they accumulate.

(c) The funds available in the Water Pollution Control Revolving Fund will be awarded to applicants on the approved state priority list as they are scheduled on the Intended Use Plan.

(d) Upon a recipient's acceptance of a loan offer and its conditions, funds are reserved for a particular project as per Section 602(b)(3) of the CWA.

*Statutory Authority G.S. 159G-5(c); 159G-15.*

##### **.0602 CERTIFICATION OF ELIGIBILITY AND NOTIFICATION OF LOAN COMMITMENT**

(a) The receiving agency shall forward to the Office of State Budget and Management a certificate of eligibility and notification of commitment for each application for which a loan commitment has been made.

(b) The certificate of eligibility shall indicate that the applicant meets all eligibility criteria and that all other requirements of the Act and of the rules governing the account have been met.

(c) The notification of commitment shall indicate the amount and the fiscal year of the loan commitment.

*Statutory Authority G.S. 159G-12; 159G-15.*

**.0603 CRITERIA FOR LOAN ADJUSTMENTS**

(a) Upon receipt of bids the debt instrument is negotiated. It may adjust the loan commitment as follows:

- (1) The loan commitment may be decreased, provide the project cost as bid is less than the estimated project cost, and the receiving agency approves the loan commitment decrease.
  - (2) Loan commitments may be increased, to a maximum of 10 percent or five thousand dollars (\$500,000), whichever is greater, provided:
    - (A) the project cost as bid is greater than the estimated project cost;
    - (B) the project as bid is in accordance with the project for which the loan commitment was made;
    - (C) the receiving agency has reviewed the bids and determined that substantial cost savings would not be available through project revisions without jeopardizing the integrity of the project; and
    - (D) adequate funds are available in the account from which the loan was awarded.
- Increases greater than 10 percent of the loan commitment shall be approved by the Local Government Commission and the Office of State Budget and Management.

*Statutory Authority G.S. 159G-12; 159G-15.*

**.0604 DISBURSEMENT OF LOANS**

(a) Disbursement of loan monies shall be made at intervals as work progresses and expenses are incurred. No disbursement shall be made until the receiving agency receives satisfactory documentation of incurred costs. At no time shall disbursement exceed the allowable costs which have been incurred at that time.

(b) Project inspection will confirm work progress, and a final inspection is required prior to final disbursement of loan monies.

(c) The receiving agency will notify the Office of State Budget and Management to make loan disbursements. A check in the amount of the disbursement authorized by the receiving agency will be forwarded to the loan recipient by the Office of State Budget and Management. The receiving agency will be notified by the Office of State Budget and Management as disbursements are made.

*Statutory Authority G.S. 159G-5(c); 159G-12; 159G-15.*

**.0605 TERMINATION OF LOANS**

Loan commitments may be terminated by the Environmental Management Commission when recipients do not meet project schedules, if they fail to award contracts within one year, or if they fail to comply with applicable Federal requirements.

*Statutory Authority G.S. 159G-5(c); 159G-11; 159G-15.*

**SECTION .0700 - LOAN REPAYMENTS**

**.0701 INTEREST RATES**

The interest rate to be charged on loans under this Chapter will be set on March 31 of each year at the lesser of four percent per annum or one-half the prevailing national market rate as derived from the Bond Buyer's 20-Bond Index in accordance with G.S. 159G-4(c). The interest rate will be the same for all loans awarded from this account during any given fiscal year.

*Statutory Authority G.S. 159G-4(c); 159G-5(c); 159G-15.*

**.0702 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS**

(a) The debt instrument setting the terms and conditions of repayment of loans under this Chapter will be established after the receipt of bids. Adjustments to the loan may only be made under Rule .0603 of this Chapter.

(b) The maximum maturity on any loan under this Chapter shall not exceed 20 years.

(c) Interest on the debt instrument shall begin to accrue on the original date that a project's contracts are scheduled to be completed. Extensions of this deadline are not allowed.

(d) All principal payments will be made annually on or before May 1. The first principal payment is due not earlier than six months after the date of completion of the project.

(e) All interest payments will be made semiannually on or before May 1 and November 1 of each year. The first interest payment is due not earlier than six months after the date of completion of the project.

(f) All principal and interest payments shall be made payable to the Water Pollution Control Revolving Fund, and submitted to the Office of State Budget and Management.

*Statutory Authority G.S. 159G-13; 159G-15; 159G-18.*

**SECTION .0800 - INSPECTION AND AUDIT**

**.0801 INSPECTION**

Inspection of a project to which a loan has been committed under this Chapter may be made to determine the percentage of completion of the project for installment disbursements, conformance with approved plans and specifications, and for compliance with all applicable laws and rules.

*Statutory Authority G.S. 159G-14; 159G-15.*

#### .0802 AUDIT OF PROJECTS

(a) Loan recipients are required to maintain project accounts in accordance with generally accepted government accounting standards.

(b) All projects to which a loan has been committed under this Chapter will be audited in accordance with G.S. 159-34.

*Statutory Authority G.S. 159G-5(c); 159G-15.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Coastal Management intends to adopt rule(s) cited as 15 NCAC 7H .1901 - .1905.*

*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on December 1, 1988 at The North Carolina Aquarium, Roanoke Island, Airport Road, Manteo, N.C.*

*Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Management Division will receive written comments up to the date of the hearing. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposal may be obtained by contacting Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-2283.*

### CHAPTER 7 - COASTAL MANAGEMENT

#### SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

#### SECTION .1900 - GENERAL PERMIT TO ALLOW FOR TEMPORARY STRUCTURES WITHIN ESTUARINE AND OCEAN HAZARD AECS

##### .1901 PURPOSE

This permit will allow for the placement of temporary structures within estuarine and ocean hazard AEC's according to the provisions provided in Subchapter 7J .1100 and according to the guidelines in this Subchapter.

*Statutory Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.*

##### .1902 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete a general permit application form requesting approval for development. Applicants shall provide information on site location, dimensions of the project area, proposed activity, name, address, and telephone number.

(b) The applicant must provide confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections of the proposed work.

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to inspect and mark the site of construction of the proposed development. Written authorization to proceed with the proposed development may be issued by the division during this visit. All work must be completed and the structure removed within 180 days following the day written authorization is issued.

*Statutory Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.*

##### .1903 PERMIT FEE

No fee will be assessed for this permit.

*Statutory Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.*

##### .1904 GENERAL CONDITIONS

(a) Temporary structures for the purpose of this general permit are those which are constructed within the ocean hazard or estuarine system AEC's and because of dimensions or functions do not meet the criteria of the existing general permits (i.e. are not a bulkhead, pier, rip-rap, groin, etc.).

(b) There must be no encroachment oceanward of the first line of stable vegetation within the ocean hazard AEC by the structure.

(c) There can be no fill activity below the plane of mean high water associated with the structure.

(d) The structure must not be located in such a manner that will directly or indirectly adversely impact coastal wetlands.

(e) The structure must not disrupt the movement of those species of aquatic life indigenous to the waterbody.

(f) Individuals shall allow authorized representatives of the Department of NRCD to make periodic inspections at any time necessary to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(g) This general permit may either be amended or repealed in whole or in part according to the provisions of G.S. 113A-107 if the commission determines that such action would be in the best public interest.

(h) This general permit will not be applicable to proposed structures when the department determines that the proposed activity may significantly affect the quality of the environment or unnecessarily endanger adjoining properties.

(i) This general permit will not be applicable to proposed structures when the department determines that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conversation or recreational values.

(j) The department may determine in some cases that this general permit is not applicable to a specific structural proposal. In such cases an individual permit application and review of the proposed project may be initiated using the application forms, fees, and procedures required by 15 NCAC 7J.

(k) This permit does not eliminate the need to obtain any other state, local or federal authorization, nor, to abide by regulations adopted by any federal or other state agency.

(l) Development carried out under this permit must be consistent with all local requirements, AEC guidelines, and local land use plans current at the time of authorization.

*Statutory Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.*

#### .1905 SPECIFIC CONDITIONS

Proposed temporary structures must meet each of the following specific conditions to be eligible for authorization by the general permit:

- (1) All aspects of the structure must be removed from the site at the termination of this general permit and full restoration accomplished.
- (2) There can be no work within any productive shellfish beds.
- (3) The proposed project must not involve the excavation of any marsh, submerged aquatic vegetation, or other wetlands.

(4) The proposed activity must not involve the disruption of normal navigation and transportation channels.

(5) The proposed project must not serve as a habitable place of residence.

(6) There will be no adverse disturbance of existing dune structures.

*Statutory Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1.*

### TITLE 21 - OCCUPATIONAL LICENSING BOARDS

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina State Board of Dental Examiners intends to adopt rule(s) cited as 21 NCAC 16Q .0101 - .0501.*

*The proposed effective date of this action is July 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on December 9, 1988 at Offices of the North Carolina State Board of Dental Examiners, 3716 National Drive, Suite 221, Raleigh, North Carolina.*

*Comment Procedures: Any person interested in these rules may present oral comments relevant to the proposals at the public hearing or deliver written comments to the board prior to January 9, 1989. Anyone wishing to address the board at the public hearing should notify the board by noon on December 8, 1988, that they wish to speak on the proposals. Oral presentations will be limited to five minutes per speaker. The board's mailing address is: Post Office Box 32270, Raleigh, North Carolina 27622-2270.*

### CHAPTER 16 - DENTAL EXAMINERS

#### SUBCHAPTER 16Q - GENERAL ANESTHESIA

#### SECTION .0100 - DEFINITIONS

##### .0101 PURPOSE

For the purposes of these rules relative to the administration of general anesthesia and sedation, by or under the direction of a licensed dentist, the following definitions shall apply:

- (1) "General Anesthesia" is the intended controlled state of depressed consciousness produced by a pharmacologic agent and accompanied by a partial or complete loss of protective reflexes including the inability to maintain an airway and respond

purposefully to physical stimulation or verbal command.

- (2) "Sedation" is the intravenous, intramuscular, subcutaneous, submuscular, or rectal administration of pharmacological agents, with the intent to obtain a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.
- (3) "Nitrous Oxide Inhalation Conscious Sedation (Dental Analgesia)" is the administration by inhalation of a combination of nitrous oxide and oxygen produced with an intent to obtain an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.
- (4) "Local Anesthesia" is the loss of sensation of pain in a specific area of the body generally produced by a topically applied agent or an injected agent without intentionally affecting the level of consciousness.

*Statutory Authority G.S. 90-28.*

#### **SECTION .0200 - TIMETABLE FOR REGULATIONS**

##### **.0201 GENERAL ANESTHESIA**

Twenty-four months after the effective date of these rules and regulations, a dentist licensed in this state shall have the right to administer or direct the administration of general anesthesia in the practice of dentistry if that dentist has met the requirements for administration of general anesthesia as specified by the State Board of Dental Examiners.

*Statutory Authority G.S. 90-28.*

##### **.0202 SEDATION**

Twenty-four months after the effective date of these rules and regulations, a dentist licensed in this state shall have the right to administer or direct the administration of sedation in the practice of dentistry if that dentist has met the requirements for administration of sedation as required by the State Board of Dental Examiners.

*Statutory Authority G.S. 90-28.*

#### **SECTION .0300 - CREDENTIALS NECESSARY FOR ADMINISTRATION OF GENERAL ANESTHESIA AND SEDATION**

##### **.0301 GENERAL ANESTHESIA CREDENTIALS**

Credentials may be satisfied by a licensed dentist to use general anesthesia on an outpatient basis for dental patients provided the dentist meets the following criteria as outlined below:

##### **(1) Required Criteria:**

- (a) The dentist has completed a minimum of one year of advanced training or the equivalent in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board; or
  - (b) Any individual who is a graduate of an ADA certified program in oral and maxillofacial surgery or as diplomate of the American Board of Oral and Maxillofacial Surgery, or is eligible for examination by the American Board of Oral and Maxillofacial Surgery, has by definition met the requirements to administer general anesthesia.
  - (c) Is a Fellow of the American Dental Society of Anesthesiology; or
  - (d) Is a licensed dentist who has been utilizing general anesthesia in a competent manner for the five years preceding the effective date of this Rule and who passes an on-site examination and inspection of office facilities by qualified representatives of the North Carolina State Board of Dental Examiners.
  - (e) The dentist may have the preanesthetic evaluation and anesthetic administration done by a qualified anesthesiologist licensed to practice in North Carolina. The anesthesiologist would monitor the patient until discharge from the dental office. The anesthesiologist and the dentist would be responsible for insuring the standard of care for the dental office to the North Carolina State Board of Dental Examiners.
  - (f) A dentist qualified to administer general anesthesia may have the anesthesia administered in collaboration with a certified nurse anesthetist. The dentist and the nurse anesthetist would be responsible for insuring standard of care for the dental office to the State Board of Dental Examiners.
- (2) A dentist using general anesthesia shall maintain a properly equipped facility for the administration of general anesthesia staffed with supervised auxiliary personnel. The clinical personnel shall have the capacity to effectively manage the procedure, as well as any problems or emergency incidents that may occur as result of the general anesthetic

or secondary to an unexpected medical complication.

- (3) A dentist and his auxiliary personnel using general anesthesia shall be trained in and capable of administering basic life support.
- (4) A dentist qualified to administer general anesthesia under this Rule may administer sedation under Rule .0302.

*Statutory Authority G.S. 90-28.*

#### **.0302 SEDATION CREDENTIALS**

Credentials may be satisfied by a licensed dentist to use sedation on an outpatient basis on dental patients provided the dentist meets the following criteria:

- (1) The dentist has received formal training and certification in a program approved by the State Board of Dental Examiners which included physical evaluation, I.V. sedation, airway management, monitoring basic life support, and emergency training hours as well as the amount of didactic and patient contact hours involved in his or her training. The minimum number of didactic hours will be 60 hours. The minimum number of patient contact hours will be 20 hours to include a minimum of 10 patients. The formal training program shall be sponsored by or affiliated with a university, a teaching hospital, an organization, or be a part of the undergraduate curriculum of an accredited dental school. Any sponsoring organization not affiliated with a university or teaching hospital shall be approved by the State Board of Dental Examiners.
- (2) The dentist may have the presedation evaluation and the sedation administration done by a qualified anesthesiologist licensed to practice in North Carolina. The anesthesiologist would monitor the patient until discharge from the dental office. The anesthesiologist and the dentist would be responsible for insuring the standard of care for the dental office to the North Carolina Board of Dental Examiners.
- (3) A dentist qualified to administer sedation may have the sedation administered in collaboration with a certified nurse anesthetist. The dentist and the anesthetist would be responsible for insuring standard of care for the dental office to the North Carolina Board of Dental Examiners.
- (4) A dentist administering sedation shall maintain a properly equipped facility for the administration of sedation staffed with supervised auxiliary personnel. The clinical personnel shall be capable of reasonably

handling procedure, problems, and emergencies incident thereto.

- (5) A dentist administering sedation and his auxiliary personnel shall be proficient in basic life support.
- (6) A dentist who has been administering sedation on an outpatient in a competent and efficient manner for the three years preceding the effective date of these rules and regulations who has not had the benefit of formal education as outlined in these rules may continue use, provided the dentist fulfills the provisions set forth in Paragraphs (d) and (e) of this Rule.

*Statutory Authority G.S. 90-28.*

#### **.0303 NITROUS OXIDE INHALATION CONSCIOUS SEDATION (DENTAL ANALGESIA) CREDENTIALS**

There will be no additional requirements or credentials necessary for a licensed dentist in North Carolina to administer nitrous oxide inhalation conscious sedation.

*Statutory Authority G.S. 90-28.*

#### **.0304 LOCAL ANESTHESIA CREDENTIALS**

There will be no additional requirements or credentials necessary for a licensed dentist in North Carolina to administer local anesthesia.

*Statutory Authority G.S. 90-28.*

### **SECTION .0400 - METHOD OF CREDENTIALING**

#### **.0401 REVIEW OF CREDENTIALS**

No dentist shall use or assume responsibility for the use of general anesthesia or sedation in a dental office of dental patients unless the dentist has met the qualifications required by the North Carolina Board of Dental Examiners. Dentists so qualified shall be subject to review and their facilities subject to inspection by members or representatives of the board as deemed appropriate by the board. Credentials must be reviewed biannually. Continuing education is encouraged:

- (1) Within one year of the effective date of these rules, each dentist who has been administering or responsible for the administration of general anesthesia shall submit credentials on the appropriate form to the North Carolina Board of Dental Examiners if that dentist desires to continue to administer or be responsible for the administration of general anesthesia to dental patients on an outpatient basis. This form must include a fee of one hundred thirty dollars (\$130.00)



as well as evidence indicating compliance with Section .0300 - General Anesthesia Credentials. Prior to the acceptance of credentials, the board may, at its discretion, require an on-site inspection of facilities, equipment, personnel, and procedures to determine if the requirements have been met. This evaluation shall be carried out by the board or by a team of consultants appointed by the board.

- (2) Within one year of the effective date of these rules, each dentist who has been administered or responsible for the administration of sedation shall submit credentials on the appropriate form to the North Carolina Board of Dental Examiners if that dentist desires to continue to administer or be responsible for the administration of sedation to dental patients on an outpatient basis. The form must be accompanied by a one hundred thirty dollars (\$130.00) fee as well as evidence of compliance with Section .0400 - Sedation Credentials. Prior to the acceptance of credentials, the board may, at its discretion, require an on-site inspection of facilities, equipment, personnel, and procedures to determine if the requirements have been met. This evaluation shall be carried out by the board or by a team of consultants appointed by the board.
- (3) Temporary approval may be granted for the new applicant based solely on credentials until all processing and investigation have been completed. Temporary approval shall not exceed 12 months.
- (4) Biannual approval of credentials will be considered following submission of the proper form and may involve board reevaluation of credentials, facilities, equipment, personnel, and procedures of a previously qualified dentist to determine if the dentist is still qualified. A renewal fee of fifty dollars (\$50.00) must accompany this form.

*Statutory Authority G.S. 90-28.*

#### SECTION .0500 - REPORTS REQUIRED

##### .0501 REPORTS REQUIRED

All licensed dentists engaged in the act or practice of dentistry while administered general anesthesia or sedation must submit a report within a 30 day period to the North Carolina Board of Dental Examiners regarding any known mortality or serious unusual incident which occurs in a dental facility or during the 24 hour period after the patient leaves the facility, if the incident produces temporary or permanent physical or

mental injury of the patient as a direct result of the administration of general anesthesia or sedation.

*Statutory Authority G.S. 90-28.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Nursing intends to adopt rule(s) cited as 21 NCAC 36 .0401 -.0404.*

*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on December 1, 1988 at Plaza Hotel, Raleigh, North Carolina.*

*Comment Procedures: Any person wishing to present oral testimony relevant to proposed rules may register at the door before the hearing begins and present hearing officer with a written copy of testimony. Written statements may be directed five days prior to the hearing date to the North Carolina Board of Nursing, P.O. Box 2129, Raleigh, N.C. 27602.*

#### CHAPTER 36 - BOARD OF NURSING

##### SECTION .0400 - UNLICENSED PERSONNEL - NURSE AIDES

##### .0401 ROLES

(a) The license nurse, Registered and Practical, may delegate nursing care activities to unlicensed personnel, regardless of title, appropriate to the level of knowledge and skill of the unlicensed care provider, and which are within the legal scope of practice for unlicensed personnel. The licensed nurse is responsible for supervision of the unlicensed personnel and maintains legal accountability and responsibility for nursing care given by all personnel to whom that care is delegated.

(b) Those activities which may be delegated to unlicensed personnel are determined by the following variables:

- (1) educational preparation of the unlicensed care provider which includes both basic educational preparation (Level I) and training added through additional educational preparation and training (Level II);
- (2) verification of clinical competence of the unlicensed care provider;

- (3) stability of the patient's clinical condition which involves predictability, risk of complication, and rate of change, and thereby: excludes delegation of nursing care activities which require nursing assessment/judgement by a licensed nurse during the performance of the activity;
- (4) the unlicensed care provider's knowledge and skill;
- (5) the variables in each service setting which include but are not limited to:
  - (A) the complexity and frequency of nursing care needed by a given patient population;
  - (B) the proximity of patients to staff;
  - (C) the number and qualifications of staff;
  - (D) the accessible resources; and
  - (E) established policies, procedures, practices, and channels of communication which lend support to types of nursing activities being delegated, or not delegated, to unlicensed personnel.

*Statutory Authority G.S. 90-171.20(b)(f)(g) (4)(5)(7); 90-171.43(4).*

#### **.0402 QUALIFICATIONS**

(a) As of January 1, 1990, a service agency shall not use any unlicensed individual, regardless of title, who provides nursing care activities, as defined in .0404 of these rules, to patients/residents for longer than the first four months following initial hiring, who has not successfully completed a Board of Nursing approved nurse aide training and competency evaluation program or a board approved competency evaluation program, unless the facility has inquired of the Board of Nursing as to information in the Nurse Aide Registry concerning the individual and has confirmed with the Board of Nursing that the individual is listed on the Nurse Aide Registry.

(b) As of the date that these rules are effective, service agencies shall not use for longer than one month, any unlicensed individual at the Nurse Aide Level II, who has not successfully completed a Board of Nursing approved Level II nurse aide training and competency evaluation program, unless the facility has inquired of the Board of Nursing as to information in the Nurse Aide Registry concerning the individual and confirms with the Board of Nursing that the individual is listed on the Nurse Aide Registry as a Nurse Aide, Level II.

*Statutory Authority G.S. 90-171.20(b)(f)(g) (4)(5)(7); 90-171.43(4).*

#### **.0403 REGISTRATION**

(a) As of the date that these rules are effective, the Board of Nursing shall maintain a list of nurse aides who are qualified in accordance with the requirements of .0402 of these rules in the Nurse Aide Registry.

(b) All nurse aides, regardless of working titles, employed or assigned in a service agency for the purpose of providing nursing care activities, upon successful completion of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program shall submit an application to the Board of Nursing for placement on the Nurse Aide Registry.

(c) A nurse aide that has completed, before July 1, 1989, a nurse aide training and competency evaluation program, shall successfully complete a board-approved competency evaluation program and shall submit an application to the Board of Nursing for placement on the Nurse Aide Registry.

(d) Each nurse aide shall renew his/her registration on a biennial basis on forms provided by the board.

(e) Any nurse aide who has had a continuous period of 24 months during which no nursing care activities were performed for monetary compensation, shall successfully complete a new training and competency evaluation program and submit an application for the Nurse Aide Registry.

(f) The state agency responsible for surveys, licensure, and certification of facilities and any other agency responsible for investigation complaints related to nurse aides, shall notify the Board of Nursing, following a timely review and investigation of allegations of patient/resident neglect and abuse and misappropriation of resident property, if the agency determines that the nurse aide has neglected or abused a patient/resident or misappropriated resident property within 10 business days of such determination:

The investigating agency's findings indicating a nurse aide has neglected or abused a patient/resident or misappropriated resident property shall be available to the public upon inquiry to the Nurse Aide Registry. Any information disclosed concerning such a finding shall include disclosure of the findings and if the individual has disputed the findings.

*Statutory Authority G.S. 90-171.20(b)(f)(g) (4)(5)(7); 90-171.43(4).*

#### **.0404 APPROVAL OF NURSE AIDE EDUCATION PROGRAMS**

## PROPOSED RULES

(a) The North Carolina Board of Nursing shall approve nurse aide training and competency evaluation programs and nurse aide competency evaluation programs which prepare two levels of nurse aides:

(1) Nurse aide training and competency evaluation programs and nurse aide competency evaluation programs may be offered by an individual, agency, or educational institution once the program is approved by the board:

(A) Each entity desiring to offer a nurse aide training and competency evaluation program or competency evaluation program shall submit the program for approval at least 60 days prior to offering the program.

(B) Nurse aide training and competency evaluation programs and competency evaluation programs shall be submitted for reapproval when the program is changed substantially, or at least every two years.

(C) The Board of Nursing representatives may survey nurse aide training and competency evaluation programs, competency evaluation programs, and associated clinical service agencies to determine the program's compliance with the requirements of the board.

(D) The Board of Nursing may approve a nurse aide training and competency evaluation program or nurse aide competency evaluation program which is approved by another state agency, if the Board of Nursing has reviewed the state agency's process and criteria of approval of nurse aide education programs and determines the process and criteria ensure that the Board of Nursing's requirements are met.

(2) The board shall identify and publish the minimum course content, minimum hours of instruction (not less than 75 hours), and retraining requirements for Level I and Level II nurse aides education programs on an annual basis.

(3) Each Nurse Aide Level I course must include:

- (A) Basic nursing skills;
- (B) Personal care skills;
- (C) Recognition of mental health and social service needs;
- (D) Basic restorative services;

(E) Resident's rights;

(F) Body mechanics;

(G) Nutrition;

(H) Elimination;

(I) Safety;

(J) Communication and documentation;

(K) Special procedures;

(L) Roles of members of the Health Care Team.

(4) Each Nurse Aide Level II course must include content identified as appropriate for the Level II Nurse Aides by the Board of Nursing.

(5) Each competency evaluation program shall include content to verify the knowledge and skills of the nurse aide who successfully completes the course as being comparable for the appropriate level of nurse aide.

(6) The board shall identify and publish minimum competencies and qualifications for faculty on an annual basis for Nurse Aide, Level I and Level II Training and Competency Evaluation Programs and Competency Evaluation Programs.

(7) Each Nurse Aide Training and Competency Program and each Competency Evaluation Program shall file with the board such records, data, and reports as may be required in order to furnish information concerning operation of the program as required by the board and concerning any individual who successfully completes the program.

(8) When an approved nurse aide training and competency evaluation program or a competency evaluation program closes, the board shall be notified in writing.

(9) Nursing students currently enrolled in Board of Nursing approved nursing programs desiring registration as a nurse aide shall submit:

(A) An application, and

(B) Verification form completed by the nursing program director indicating successful completion of course work equivalent in content and clinical hours as required for a nurse aide.

*Statutory Authority G.S. 90-171.20(b)(f)(g)  
(4)(5)(7); 90-171.43(4).*

*Upon request from the adopting agency, the text of rules will be published in this section.*

*When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.*

*Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.*

## TITLE 17 - DEPARTMENT OF REVENUE

### CHAPTER 6 - INDIVIDUAL INCOME TAX DIVISION

#### SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

#### SECTION .0300 - PERSONAL EXEMPTION

##### .0301 GENERAL

G.S. 105-149 provides the personal exemptions for individuals.

*History Note: Statutory Authority G.S. 105-149; 105-262;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988;  
April 19, 1981.*

##### .0302 ONE THOUSAND ONE HUNDRED DOLLAR PERSONAL EXEMPTION

Each individual (with the exception of one who moves into or out of North Carolina, or who resides outside of North Carolina and derives only a portion of his income in North Carolina) is entitled to at least a one thousand one hundred dollar (\$1,100) personal exemption.

*History Note: Statutory Authority G.S. 105-149; 105-262;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988.*

##### .0303 TWO THOUSAND TWO HUNDRED DOLLAR PERSONAL EXEMPTION

(a) An individual may claim only one two thousand two hundred dollars (\$2,200) basic personal exemption even though he may meet more than one set of qualifications.

(b) In the case of a married couple living together on the last day of the year the spouse with the larger adjusted gross income is allowed a two thousand two hundred dollars (\$2,200) exemption and the other spouse a one thousand one hundred dollars (\$1,100) exemption. By agreement the spouse with the smaller adjusted gross income may claim the two thousand two hundred dollars (\$2,200) exemption if the other spouse files a return and claims only one thousand one hundred dollars (\$1,100). If one spouse dies during a taxable year, the spouse with the larger adjusted gross income for that year will be allowed two thousand two hundred dollars (\$2,200) exemption except that if a return claiming one thousand one hundred dollars (\$1,100) exemption is filed for the spouse with the larger adjusted gross income, the other spouse may claim the two thousand two hundred dollars (\$2,200) exemption.

The exemption of the two spouses may not be combined and neither spouse may claim a dependency exemption for the other spouse.

A married individual who is otherwise entitled to claim two thousand two hundred dollars (\$2,200) exemption will not be denied such exemption because of temporary separation of the two spouses for such reasons as military service, financial reasons, or other expedencies.

A common law marriage is not recognized in North Carolina for income tax purposes; therefore, a man and woman living together as common law husband and wife are not entitled to the two thousand two hundred dollars (\$2,200) exemption allowed to a married couple, except when a man and woman move into this state from a state which recognized their common law marriage and who continue to live together as common law man and wife after becoming North Carolina residents.

(c) To qualify for her two thousand two hundred dollars (\$2,200) widow's exemption, the widow is not required to have custody of the child nor to provide support for the child. If support is provided for the child and if the child qualifies as a dependent by meeting the requirements of 17 NCAC 6B .0308, the widow may claim the dependency exemption in addition to the widow's two thousand two hundred dollars (\$2,200) exemption. When a widow's child is under 18 years of age at the beginning of the year but is over 18 on the last day of the year the widow's two thousand two hundred dollars (\$2,200) exemption may not be claimed even though the child's birthday is in the last half of the year. The widow may, however, be entitled to the two thousand two hundred dollars (\$2,200) head of household exemption if the re-

quirements of Subdivision (f) of this Rule are met for the major part of the year.

(d) A widower having a minor child has the same exemption as a widow.

(e) A divorced individual having sole custody of his or her minor child (a child under 18 years of age) may claim the two thousand two hundred dollars (\$2,200) personal exemption provided the divorced individual does not receive any alimony payments for the support of herself or himself and does not receive any support payments for the child or children. If the divorced individual's two thousand two hundred dollars (\$2,200) exemption is denied because of the receipt of either alimony or child support payments, the divorced individual may still qualify for the two thousand two hundred dollars (\$2,200) head of household exemption if the requirements of Subdivision (f) of this Rule are met.

An individual does not have to be legally divorced to be considered a divorced individual for income tax exemption purposes. Estranged couples separated with the intent to remain separate and apart are considered for personal exemption purposes to be divorced individuals.

(f) A personal exemption of two thousand two hundred dollars (\$2,200) as head of household exemption may be claimed by a single individual, a widow, a widower, or a divorced individual who maintains a household which constitutes the principal place of abode for himself, herself, or his or her closely related dependent provided the following conditions are met:

- (1) The individual must have provided more than half the cost of maintaining the household for the year.
- (2) The household must have been the principal place of abode for the individual or his or her closely related dependent for 183 days or more during the year.
- (3) The household must have been a place of abode having those facilities normally required for both eating and sleeping.

The closely related dependent must be one of those individuals listed at 17 NCAC 6B .0308(a)(3)(A) for whom a eight hundred dollars (\$800.00) dependency exemption is allowable.

The cost of maintaining a household includes the expenses incurred for the benefit of the occupant or for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of the occupant or occupants for the taxable year. These expenses include property taxes, mortgage interest, rent, upkeep and repairs, utility charges, domestic help, insurance on the dwelling and premises, and food consumed in the home.

The cost of maintaining a household does not include the cost of clothing, education, medical

treatment, vacations, life insurance, transportation, rental value of the taxpayer's home or the value of his service or those of a member of his household.

Only one head of household exemption is allowable with respect to any one household, and no individual is entitled to more than one head of household exemption. A head of household exemption cannot be claimed based on a multiple maintenance agreement.

When an individual marries during the year after having qualified as a head of household for the major portion of the year (183 days) and has the smaller adjusted gross income of the married couple, he or she is entitled to the two thousand two hundred dollars (\$2,200) head of household exemption and the other spouse is entitled to the two thousand two hundred dollars (\$2,200) exemption allowed for the spouse of the marriage having the larger adjusted gross income. If the spouse who qualified as the head of household for the major portion of the year has the larger adjusted gross income, that spouse is entitled only to the two thousand two hundred dollars (\$2,200) married person's exemption and if he or she by agreement allows the other spouse to claim the two thousand two hundred dollars (\$2,200) married person's exemption, then the spouse with the larger adjusted gross income is entitled to only a one thousand one hundred dollars (\$1,100) personal exemption and is not entitled to the two thousand two hundred dollars (\$2,200) head of household exemption. When a married individual dies before the major portion of the year has passed and he or she has the larger adjusted gross income of the married couple, he or she is entitled to the two thousand two hundred dollars (\$2,200) married person's exemption and the other spouse may be entitled to the two thousand two hundred dollars (\$2,200) head of household exemption provided the other spouse maintained a household for 183 days or more during the year after his or her spouse died. If the surviving spouse who qualified as the head of household for the major portion of the year has the larger adjusted gross income, that spouse is entitled only to the two thousand two hundred dollars (\$2,200) married person's exemption and if he or she by agreement with the deceased spouse's representative allows the deceased spouse to claim the two thousand two hundred dollars (\$2,200) married person's exemption, then the surviving spouse is entitled to only a one thousand one hundred dollars (\$1,100) personal exemption and is not entitled to the two thousand two hundred dollars (\$2,200) head of household exemption.

*History Note: Statutory Authority G.S.*

105-149(a)(2); 105-149(a)(4); 105-149(a)(7);  
105-149(a)(2a); 105-135; 105-262;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988;  
August 1, 1986; May 1, 1984; June 1, 1982.

#### .0304 BLIND PERSONS

(a) An individual who is totally blind or whose visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose widest diameter of visual field subtends an angle of no greater than 20 degrees, is entitled to claim one thousand one hundred dollars (\$1,100) personal exemption in addition to any other allowable exemption. The extra one thousand one hundred dollars (\$1,100) blind exemption applies only to the taxpayer and not to the spouse or any dependent of the taxpayer.

*History Note: Statutory Authority G.S.*  
105-149(a)(8); 105-262;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988;  
February 21, 1979.

#### .0305 INDIVIDUALS AGE 65 OR OVER

An individual who has reached the age of 65 years on or before the last day of his taxable year is entitled to claim one thousand one hundred dollars (\$1,100) personal exemption in addition to all other allowable exemptions. This additional one thousand one hundred dollars (\$1,100) personal exemption applies only to the taxpayer and not to a spouse or any dependent of the taxpayer.

*History Note: Statutory Authority G.S.*  
105-149(a)(9); 105-262;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988.

#### .0306 SEVERELY RETARDED DEPENDENT

A parent or guardian who provides over half the support during the year for a person with an intelligence quotient (I.Q.) below 40 may claim an additional two thousand two hundred dollars (\$2,200) exemption. In order to qualify for this additional exemption there must be attached to the income tax return a statement signed by a licensed physician, psychologist, or psychological examiner verifying that the dependent's intelligence quotient is below 40.

*History Note: Statutory Authority G.S.*  
105-149(a)(10); 105-262;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988;  
February 4, 1978.

#### .0307 HEMOPHILIACS

A taxpayer who is a hemophiliac will be allowed an additional one thousand one hundred dollars (\$1,100) exemption for himself and a taxpayer will be allowed an additional one thousand one hundred dollars (\$1,100) exemption for each dependent who is a hemophiliac. Eligible hemophiliacs must submit a certificate from a physician or county health department to the division of health services of the North Carolina Department of Human Resources certifying that their condition meets the criteria set out in G.S. 105-149(a) and must attach a supporting statement to the North Carolina income tax return verifying that such certificate has been obtained and submitted. This exemption may be claimed for a certified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

*History Note: Statutory Authority G.S.*  
105-149(a)(8a); 105-262;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988;  
April 19, 1981.

#### .0308 EXEMPTION FOR DEPENDENTS

(a) In addition to the basic exemption of one thousand one hundred dollars (\$1,100) or two thousand two hundred dollars (\$2,200) an exemption of eight hundred dollars (\$800.00) may be claimed for each qualified dependent. To claim an individual as a dependent the following three tests must be met:

- (1) Over one-half the support for the year must be furnished by the taxpayer.
- (2) The gross income of the individual claimed must be less than one thousand dollars (\$1,000) during the year (except a child or stepchild of the taxpayer who was a full-time student or under 19 years of age).
- (3) The individual must fall within one of the following classes:
  - (A) related to the taxpayer as follows: son, daughter, stepchild, mother, father, grandparent, brother, sister, grandchild, stepbrother, stepsister, stepmother, stepfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and the following if related by blood: aunt, uncle, nephew, niece;
  - (B) a member of the same household who was related to the taxpayer by blood, affinity or adoption, the taxpayer's foster child, or an individual of whom the taxpayer had legal custody during the taxable year;

- (C) a former member of the same household as the taxpayer who otherwise qualifies as a dependent who for the taxable year receives institutional care required by reason of a physical or mental disability.

*History Note: Statutory Authority G.S. 105-149(a)(5); 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988; May 1, 1984; April 19, 1981; February 4, 1978.*

**.0309 DEPENDENT IN INSTITUTION OF HIGHER LEARNING**

An exemption of six hundred sixty dollars (\$660.00) in addition to all other exemptions is allowed for a dependent who is a full-time student at an accredited college or university or other institution of higher learning. For this purpose, a full-time student means a dependent enrolled for full-time study on the last day of the income year or enrolled for full-time study for a period of at least five months (whether or not consecutive) during the income year. Dependents for this purpose are individuals listed in 17 NCAC 6B .0308(a)(3). Attendance as a full-time student at one of the following institutions, for purposes other than to secure a high school diploma, will meet the requirements for claiming the additional six hundred sixty dollars (\$660.00) exemption:

- (1) any accredited four-year or two-year college or university,
- (2) a technical institute,
- (3) a business college,
- (4) a beauty school,
- (5) a barber college,
- (6) a nurses school (including a nondegree program).

The additional six hundred sixty dollars (\$660.00) exemption may not be claimed by a taxpayer for himself or herself. Neither a husband or wife may claim the additional six hundred sixty dollars (\$660.00) by reason of the other spouse being enrolled full-time in an institution of higher learning.

*History Note: Statutory Authority G.S. 105-149(a)(5); 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988; April 19, 1981.*

**.0310 DECEASED OR INCOMPETENT INDIVIDUALS**

A fiduciary filing a return for an individual who has died during the year may claim the same basic one thousand one hundred dollars (\$1,100)

or two thousand two hundred dollars (\$2,200) personal exemption to which the taxpayer would have otherwise been entitled plus any applicable allowance for dependents.

A fiduciary filing a return for an incompetent individual may claim the same exemption to which the individual would otherwise be entitled.

*History Note: Statutory Authority G.S. 105-149(a)(6); 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988.*

**.0312 OTHER CONSIDERATIONS**

The status on the last day of the income year determines the right of the individual to the exemption with the following exceptions:

- (1) An individual is entitled to the exemptions for a husband, wife or dependents who died during the year.
- (2) An individual who shall have been divorced or separated or who shall have ceased to be head of household during the income year may claim the same exemption to which he or she would have been entitled if the change had not occurred, provided the status remained unchanged for the major portion of the income year.

Note: A married individual entitled to claim a two thousand two hundred dollars (\$2,200) exemption who separated from his or her spouse after the major portion of the year had passed may for that year claim a two thousand two hundred dollars (\$2,200) exemption although for the next year the exemption may be one thousand one hundred dollars (\$1,100). In this case, the individual with the larger adjusted gross income for the taxable year will be entitled to two thousand two hundred dollars (\$2,200). An individual making such a claim must be able to submit factual information that his or her income was the larger.

The last day of the income year for an individual who has died is the date of death; therefore, the major portion of the income year for a deceased individual who was divorced or was a head of household is the major portion of the period from the first day of the income year to the date of death.

- (3) A taxpayer shall be entitled to claim an exemption for an individual who qualified as a dependent during the year even though on the last day of the year the status was not such as to meet the dependency requirements, provided that the support furnished constituted over half of his or her support for the year.



A child born alive at any time during the year may be claimed as a dependent even though such child lived only a short time. A still-born child cannot be claimed as a dependent.

*History Note: Statutory Authority G.S. 105-149(c); 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988; May 1, 1984; March 11, 1978.*

**.0313 DEAF INDIVIDUALS**

An individual who has a loss of hearing in the speech frequencies (500 to 2000 Hertz) in the better ear that averages 86 decibels (I.S.O.) or more is entitled to claim an additional exemption of one thousand one hundred dollars (\$1,100). The additional exemption applies only to the taxpayer and not to the spouse or a dependent. A supporting statement from a physician must be attached to the return.

*History Note: Statutory Authority G.S. 105-149(a)(8b); 105-262; Eff. February 11, 1978; Amended Eff. November 1, 1988.*

**.0314 RENAL DISEASE**

A taxpayer who suffers from chronic irreversible renal disease and whose condition requires the use of dialysis is entitled to an additional one thousand one hundred dollars (\$1,100) exemption and a taxpayer is entitled to an additional one thousand one hundred dollars (\$1,100) for each dependent with such disease. Eligible individuals must submit a certificate from a physician or county health department to the Division of Health Services of the North Carolina Department of Human Resources certifying that their condition meets the criteria set out in G.S. 105-149(a) and must attach a supporting statement to the return verifying that such certificate has been submitted. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

*History Note: Statutory Authority G.S. 105-149(a)(8c); 105-262; Eff. February 11, 1978; Amended Eff. November 1, 1988; April 19, 1981.*

**.0315 PARAPLEGICS**

An additional one thousand one hundred dollars (\$1,100) exemption may be claimed for the taxpayer or the taxpayer's dependent who is a paraplegic or who is disabled to the extent that

he must use a wheelchair to move about and to function effectively or who is a double-leg amputee above the ankle. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed. A supporting statement from a physician must be attached to the return.

*History Note: Statutory Authority G.S. 105-149(a)(8d); 105-262; Eff. April 19, 1981; Amended Eff. November 1, 1988; February 1, 1988.*

**.0316 CYSTIC FIBROSIS**

An additional one thousand one hundred dollars (\$1,100) exemption may be claimed for the taxpayer or the taxpayer's dependent who has cystic fibrosis. To qualify for the exemption, eligible individuals must submit with their income tax return a certificate from the Division of Health Services of the North Carolina Department of Human Resources. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

*History Note: Statutory Authority G.S. 105-149(a)(8e); 105-262; Eff. August 1, 1986; Amended Eff. November 1, 1988.*

**.0317 SPINA BIFIDA**

An additional one thousand one hundred dollars (\$1,100) exemption may be claimed for the taxpayer or the taxpayer's dependent who has spina bifida, an open neural tube defect. To qualify for the exemption, eligible individuals must submit with their income tax return a certificate from the Division of Health Services of the North Carolina Department of Human Resources. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

*History Note: Statutory Authority G.S. 105-149(a)(8f); 105-262; Eff. August 1, 1986; Amended Eff. November 1, 1988.*

**.0318 MULTIPLE SCLEROSIS**

An additional one thousand one hundred dollar (\$1,100) exemption may be claimed for the taxpayer or the taxpayer's dependent who has multiple sclerosis. To qualify for the exemption, eligible individuals must submit with their income tax return a supporting statement from a



physician or county health department. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

*History Note: Statutory Authority G.S.  
105-149(a)(8g); 105-262;  
Eff. August 1, 1986;  
Amended Eff. November 1, 1988.*

**.0319 SEVERE HEAD INJURY**

An additional one thousand one hundred dollars (\$1,100) exemption may be claimed for the taxpayer's dependent who is in either (1) a vegetative state or (2) a severely disabled condition as assessed by the Glasgow Outcome Scale. To qualify for the exemption, a supporting statement from a physician must be attached to the income tax return verifying that the dependent has one of these conditions. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

*History Note: Statutory Authority G.S.  
105-149(a)(8h); 105-262;  
Eff. August 1, 1986;  
Amended Eff. November 1, 1988.*

**.0320 MUSCULAR DYSTROPHY**

An additional one thousand one hundred dollars (\$1,100) exemption may be claimed for the taxpayer or the taxpayer's dependent who has multiple sclerosis. To qualify for the exemption, eligible individuals must submit with their income tax return a supporting statement from the physician or county health department. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

*History Note: Statutory Authority G.S.  
105-149(a); 105-262;  
Eff. November 1, 1988.*

**.0321 ORGAN AND TISSUE TRANSPLANTS**

An additional one thousand one hundred dollars (\$1,100) exemption may be claimed for the taxpayer or the taxpayer's dependent who is required to take immunosuppressant drugs for the remainder of their lives because of an organ or tissue transplant. To qualify for the exemption, a supporting statement from a physician or county health department must be attached to the income tax return certifying that the taxpayer or his dependent is the recipient of an organ or tissue transplant and is required to take

immunosuppressant drugs for the remainder of his life to suppress rejection of a transplanted organ or tissue. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

*History Note: Statutory Authority G.S.  
105-149(a); 105-262;  
Eff. November 1, 1988.*

**SECTION .0400 - ANNUITIES AND PENSIONS**

**.0408 FEDERAL EMPLOYEES PENSIONS**

(a) For taxable years beginning on or after January 1, 1989, in the case of a pension received under a federal employee retirement program to which an employee made contributions during his working years, the recipient of the pension payments is allowed to exclude four thousand dollars (\$4,000) each year. If the employee will recover his cost within three years, he is allowed to recover his cost tax free and after recovery of cost, four thousand dollars (\$4,000) of the amount received each year is exempt. If the employee will not recover his cost within three years, he is allowed to exclude an amount as cost recovery each year under the general rule stated at 17 NCAC 6B .0402 and also four thousand dollars (\$4,000) of the excess over the cost recovery portion received each year. The four thousand dollar (\$4,000) exclusion applies to all benefit payments, both disability and regular, after the taxpayer has recovered his cost. State law does not exclude a portion of the payment because of permanent and total disability.

When there is an increase in the amount of the benefits paid on a federal employee's pension, the amount previously determined as the annual exclusion is not changed. The increased benefit increases the reportable income each year from the pension.

(b) Each beneficiary receiving a portion of a deceased federal employee's pension is allowed to exclude up to four thousand dollars (\$4,000) of the amount received from the pension each year.

A retired serviceman may exclude four thousand dollars (\$4,000) each year of the retired or retainer pay received as a result of service in any of the armed forces of the United States. Since armed forces retirement pay is not payable to a survivor or beneficiary there is no application of the four thousand dollar (\$4,000) exclusion to them.

(c) All amounts received under a retired serviceman's family protection plan may be excluded from gross income until the amount excluded equals any amount of the consideration

for the contract which the retired serviceman has not previously recovered by exclusion from state income taxation under G.S. 105-141(b)(20).

In addition there may be excluded any amount treated as additional consideration paid by the employee under G.S. 105-141(b)(11).

(d) The consideration for the contract which may be excluded under G.S. 105-141(b)(20) by the retired serviceman, or under G.S. 105-141.1(i) by the beneficiary or beneficiaries, is the total of the reduction in the retired or retainer pay of the retired serviceman used to provide the annuity plus any amounts deposited by the serviceman with the U.S. Treasury pursuant to the annuity or to his election to receive veterans benefits in lieu of some or all of his retirement pay.

(e) If an individual receives separate retirement payments as a retired federal employee and as a retired serviceman he is entitled to separate exclusions up to four thousand dollars (\$4,000) each.

When an individual who is receiving payments subject to a four thousand dollar (\$4,000) exclusion moves into or out of North Carolina during the year, the exclusion for that year must be prorated according to the number of reportable monthly payments for the year which are reportable to North Carolina. A retired federal civil service worker who moves into North Carolina during a year when he is recovering his cost under the three year rule makes the proration on the basis of the number of months in which payments are received after he has recovered his costs. (See also Exempt Income.)

*History Note: Statutory Authority G.S.*

*105-141.1; 105-141(b)(14);*

*105-141(b)(18); 105-141(b)(20); 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. November 1, 1988;*

*June 1, 1982; March 22, 1981;*

*February 11, 1978.*

## SECTION .0600 - OUT-OF-STATE INCOME AND TAX CREDITS

### .0602 RESIDENTS

(a) G.S. 105-135(13) defines residents for any income year as "individuals who, at any time during such income year, are domiciled in this state, or who, whether regarding their domicile as in this state or not, reside within this state for other than a temporary or transitory purpose." Domicile has been defined as the place where an individual has a true, fixed, permanent home and principal establishment, and to which place, whenever he is absent, he has the intention of returning. There are other definitions of

domicile, and this definition is presented solely for use as a guide in determining residency.

In many cases, a determination must be made as to when or whether a domicile has been abandoned. A long standing principle in tax administration, repeatedly upheld by the courts, is that a man can have but one domicile; and, once established, it is not legally abandoned until a new one is established. A taxpayer may have several places of abode in a year, but at no time can an individual have more than one domicile. A mere intent or desire to make a change in domicile is not enough; voluntary and positive action must be taken.

(h) In the United States the taxable situs of intangible property, such as bank deposits, stocks, bonds, etc., is usually considered to be the residence of the owner if the owner is an individual. Intangible property used in a trade or business would acquire a taxable situs at the location of the business. The physical location of the bank, the corporation, the stock certificates, etc., does not determine taxing jurisdiction over the intangible property or income derived therefrom. North Carolina taxes a resident on income he derives from any intangible property which he owns and does not allow credit for tax paid to another state thereon.

Some foreign countries, however, tax any income or property over which they exercise control. In some cases they may levy and collect an income tax on dividends, interest, etc., when these items are paid. A North Carolina resident who receives dividends or similar payments from sources within foreign countries from which income tax has been withheld may be entitled to a tax credit.

*History Note: Statutory Authority G.S.*

*105-135(13); 105-141(a); 105-147(9);*

*105-149(b); 105-151; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. November 1, 1988;*

*August 1, 1986; May 1, 1984;*

*June 1, 1982.*

### .0603 NONRESIDENTS

(b) A nonresident individual is required to report to North Carolina all income which is attributable to the ownership of any interest in real or tangible personal property in this state or which is from a business, trade or profession, or occupation carried on in this state. No tax credit is allowed by North Carolina to a nonresident for tax paid to another state or country. For individual income tax purposes, the term "business carried on in this state" means the operation of any activity within North Carolina regularly, continuously, and systematically for the purpose

of income or profit. A sporadic activity, a hobby, or an amusement diversion does not come within the definition of a business carried on in this state. Income from an intangible source which is received in the course of a business operation in this state so as to have a taxable situs here (including such income which is included in the distributive share of partnership income, whether distributed or not) is taxable to nonresidents.

A nonresident may claim a deduction on his North Carolina income tax return for business expenses paid in connection with the earning of income in North Carolina. Also, a nonresident may claim itemized nonbusiness deductions or the standard deduction on the basis that his North Carolina adjusted gross income relates to his total adjusted gross income, provided the nonresident's state of residence allows similar apportionment to North Carolina residents. Residents of states not having an income tax will be allowed itemized nonbusiness deductions on their North Carolina income tax return. From information available, residents of the other 49 states and the District of Columbia would be allowed apportioned nonbusiness deductions or the standard deduction when filing a North Carolina tax return.

G.S. 105-142(c) provides that if an established business in North Carolina is owned by a nonresident individual or by a partnership having one or more nonresident members and if the business is operating in one or more other states, the net income of the business attributable to North Carolina for the purpose of computing the North Carolina income tax liability of the nonresident individual or nonresident partner must be determined by multiplying the total net income of the business by the allocation ratio ascertained under the provisions of G.S. 105-130.4. (This allocation of income does not effect the reporting of income by the resident individual or resident partner because he is taxable on his share of the net income of the business whether or not any portion of it is attributable to another state or country.)

*History Note: Statutory Authority G.S. 105-130.4; 105-134; 105-135(13); 105-142(c); 105-147(18); 105-151; 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988; August 1, 1986; May 1, 1984; June 1, 1982.*

#### SECTION .1700 - EXEMPT INCOME

##### .1750 FOSTER PARENTS REIMBURSEMENT

Payments to a foster parent by a child-placing agency are not taxable income provided the payments received do not exceed the expenses incurred for taking care of the child in your home.

If the individual's expenses exceed the payments, a deduction for a charitable contribution may be claimed for the excess expenses, provided the participating organization on behalf of which the expenses are incurred is a qualified organization to which contributions are otherwise deductible for income tax purposes.

*History Note: Statutory Authority G.S. 105-141(a); 105-262; Eff. August 1, 1986; Amended Eff. November 1, 1988.*

#### SECTION .2700 - INTEREST DEDUCTION

##### .2704 HUSBAND AND WIFE

When nonbusiness property is jointly owned by husband and wife or is owned by them as a tenancy by the entirety the spouse actually paying the interest may claim the deduction.

*History Note: Statutory Authority G.S. 105-147(5); 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988.*

#### SECTION .2800 - TAXES PAID

##### .2803 WHO MAY CLAIM THE DEDUCTION

A taxpayer may deduct only those taxes imposed upon him or her.

Note: Real estate taxes are deductible only by the owner of the property. When nonbusiness property is jointly owned by husband and wife or is owned by them as a tenancy by the entirety, taxes attributable to the property are deductible by the spouse actually paying the taxes.

Tenant-shareholders in a cooperative housing, condominium, or apartment corporation may deduct amounts paid to the corporation representing their proportionate share of the real estate taxes the corporation paid or incurred on the property. If the corporation leases the land and buildings and is required to pay the real estate taxes under the terms of the lease agreement, the shareholder's portion of such taxes is not deductible.

*History Note: Statutory Authority G.S. 105-147(6); 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988.*

#### SECTION .3000 - CONTRIBUTIONS

### .3007 NONDEDUCTIBLE CONTRIBUTIONS

Some contributions which are not deductible are as follows:

- (1) gifts to relatives, friends, or other individuals;
- (2) donations to propaganda organizations;
- (3) contributions to civic leagues and social clubs;
- (4) contributions to labor unions;
- (5) contributions to chambers of commerce;
- (6) payments to a hospital for the care of a particular patient;
- (7) payment of tuition earmarked for a specific individual or for specific individuals;
- (8) blood donated to the Red Cross or other blood banks;
- (9) the value of the use of property by a charitable organization;
- (10) dues to Y.M.C.A. or other organizations for which personal benefits are received;
- (11) contributions (an estimated amount) based on a certain percentage of income;
- (12) that portion of the fair market value of property allowed as a tax credit for contributing property for certain public purposes (See Tax Credits);
- (13) contributions to the United States Government or any other state or its instrumentalities or its political subdivisions are not deductible.

*History Note: Statutory Authority G.S. 105-147(15); 105-147(16); 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988; April 5, 1981.*

### SECTION .3500 - PARTNERSHIPS

#### .3525 TENANCY BY THE ENTIRETY

(b) For taxable years beginning on and after January 1, 1983, there cannot be a valid partnership in respect to the income or loss from property owned as tenants by the entirety unless the property is actually transferred to a partnership so that it is no longer owned as tenants by the entirety. The law specifically provides how the income or loss from property owned as tenants by the entirety shall be reported for State Income Tax purposes. (See Tenancy By the Entirety.) If there is a valid partnership agreement and the property is transferred so that it is no longer owned as entireties' property but is owned by a partnership, the partnership income must be reported as provided by the partnership agreement and a partnership return would be required to be filed.

*History Note: Statutory Authority G.S.*

*105-142(c); 105-152(a)(3); 105-154(b); 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988; May 1, 1984.*

### SECTION .3800 - MISCELLANEOUS RULES

#### .3802 DEDUCTIONS

(g) When a taxpayer uses a portion of his home regularly and exclusively either as his principal place of business; or as a place of business that is used by patients, clients, or customers in meeting and dealing with him in the normal course of his trade or business, he may deduct a pro rata portion of the operating and depreciation expense. In determining whether or not the expenses are allowable deductions, the department follows those federal rules and regulations in effect during the income year, except that North Carolina has no provision for reducing such expenses by two percent of adjusted gross income as required for federal tax purposes, or for limiting the home office expense deduction to the amount of gross income from the business. For state tax purposes, the entire home office expense is deductible in the year of payment without any carryover as allowed for federal tax purposes.

*History Note: Statutory Authority G.S. 105-147(1); 105-147(2); 105-147(7); 105-147(9)a; 105-147(10); 105-147(24); 105-147(28); 105-148(1); 105-148(2); 105-148(8); 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988; February 1, 1988; April 1, 1987; February 1, 1987.*

#### .3803 OTHER ITEMS

(l) When an individual checks "Yes" to the question, "Do you want \$1.00 to go to this fund (North Carolina Political Parties Financing Fund):" on his tax return, the total funds designated will be distributed to political parties in North Carolina on a pro rata basis according to voter registrations. Checking "Yes" will neither increase his tax nor reduce his refund.

(r) Effective for income tax years beginning on or after January 1, 1988, an individual may elect to contribute all or any portion of his income tax refund, at least one dollar (\$1.00) or more, to the North Carolina Candidates Financing Fund. Once the election is made to contribute, the election cannot be revoked after the return has been filed.

The amount contributed may be claimed as a contribution on the following years income tax

return provided the individual itemizes his non-business deductions.

The contributions will be used in the political campaigns of certified candidates for the North Carolina Council of State.

*History Note: Statutory Authority G.S. 8-45.3; 105-142(a); 105-144(a); 105-144.3; 105-147(1)h; 105-147(9)a; 105-147(17); 105-147(19); 105-148(1); 105-159.1; 105-163.16(c); 105-163.16(e); 105-251; 105-262; 147-77; Eff. February 1, 1976; Amended Eff. November 1, 1988; February 1, 1988; February 1, 1987; August 1, 1986.*

#### **SUBCHAPTER 6C - WITHHOLDING**

##### **SECTION .0100 - WITHHOLDING INCOME TAXES**

###### **.0110 COMMON CARRIERS**

Under the provisions of Federal Public Law 91-569, withholding of state income tax from wages of employees who cross state lines in the operation of interstate commerce common carriers or on private motor vehicle carriers of property or as roadway maintenance employees of railroads is restricted to only one state, usually the state of residence of the employees; however, if the employee earns more than 50 percent of his wages in a nonresident state, tax may only be withheld for the nonresident state. The 50 percent factor is determined by mileage in the case of railroad and motor vehicle operating personnel and by time worked or scheduled flight time for employees of other common carriers. Withholding for the nonresident state will apply only if the employer's payroll records for the preceding year show that the employee earned more than 50 percent of his total compensation in the nonresident state.

Under the Federal Aviation Act (49 USCS-1512), a nonresident airline employee rendering services on an aircraft would not be liable for North Carolina income tax unless his scheduled flight time in North Carolina is more than 50 percent of his total scheduled flight time during the calendar year. If the employee's flight logs show that more than 50 percent of the scheduled flight time is in North Carolina, the amount of income reportable to this state would be based on the percentage that his North Carolina flight time is to his total flight time for the year.

*History Note: Statutory Authority G.S. 105-163.2; 105-163.18; 105-262; 49 U.S.C. Sec. 26; 49 U.S.C. Sec. 301A;*

*49 U.S.C. Sec. 923;  
49 U.S.C. Sec. 1512;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988.*

#### **TITLE 19A - DEPARTMENT OF STATE TRANSPORTATION**

##### **CHAPTER 2 - DIVISION OF HIGHWAYS**

###### **SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS**

##### **SECTION .0200 - OUTDOOR ADVERTISING**

###### **.0203 OUTDOOR ADVERTISING ON INTERSTATE AND FEDERAL AID HWYS.**

The following standards shall apply to the erection and maintenance of outdoor advertising signs in all zoned and unzoned commercial and industrial areas located within 660 feet of the nearest edge of the right of way of interstate and federal-aid primary highways. The standards shall not apply to those signs enumerated in G.S. 136-129(1),(2), and (3), which are directional and other official signs and notices, signs advertising the sale or lease of property upon which they are located, and signs which advertise activities conducted on the property upon which they are located:

###### **(1) Size of Signs:**

- (a) The maximum area for any one sign shall be 1,200 square feet with a maximum height of 30 feet and maximum length of 60 feet, inclusive of any border and trim but excluding the base or apron, supports, and other structural members.
- (b) The area shall be measured by the smallest square rectangle, triangle, circle, or combination thereof which will encompass the entire sign.
- (c) The maximum size limitations shall apply to each side of a sign structure; the signs may be placed back-to-back, side-by-side, or in V-type construction with not more than two displays to each facing, and such sign structure shall be considered as one sign.
- (d) Side-by-side signs shall be structurally tied together to be considered as one sign structure.
- (e) V-type and back-to-back signs will not be considered as one sign if located more than 15 feet apart at their nearest points.

###### **(2) Spacing of Signs:**

- (a) Interstate and Federal-aid Primary Highways. Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness

of any official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.

- (b) Interstate highways and freeways on the federal-aid primary system:

- (i) No two structures shall be spaced less than 500 feet apart.

- (ii) Outside of incorporated towns and cities, no structure may be located within 500 feet of an interchange, collector distributor, intersection at grade, safety rest area or information center. The 500 feet shall be measured from the point at which the pavement widens and the direction of measurement shall be along the edge of pavement away from the interchange, collector distributor, intersection at grade, safety rest area or information center, as shown in Exhibit 1A. In those interchanges where a quadrant does not have a ramp, the 500 feet for the quadrant without a ramp shall be measured along the outside edge of pavement for the interstate or freeway highway as follows:

- (A) Where a route is bridged over the freeway or interstate highway, the 500 foot measurement shall begin on the outside edge of pavement of the freeway highway or interstate at a point directly below the edge of the bridge. The direction of measurement shall be along the edge of pavement away from the interchange, as shown in Exhibit 1B.

- (B) Where a freeway or interstate highway is bridged over another route, the 500 foot measurement shall be made from the end of the bridge in the quadrant. The direction of measurement shall be along the edge of pavement away from the bridge, as shown in Exhibit 1C.

- (C) Where the routes involved are both freeway or interstate routes, measurements on both routes will be made according to (1) and/or (2), whichever applies.

Should there be a situation where there is more than one point at which the pavement widens along each road within a quadrant, the measurement shall be made from the pavement widening which is furthest from the intersecting roadways.

- (c) Non-freeway federal-aid primary highways:

- (i) Outside of incorporated towns and cities -- no two structures shall be spaced less than 300 feet apart.

- (ii) Within incorporated towns and cities -- no two structures shall be spaced less than 100 feet apart.

- (d) The foregoing provisions for the spacing of signs do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.

- (e) Official and "on-premise" signs, as permitted under the provisions of G.S. 136-129(1) to (3), and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

- (f) The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highways.

(3) Lighting of Signs: Restrictions:

- (a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

- (b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the interstate or federal-aid primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

- (c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

- (d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the state.

- (e) Illumination shall not be added to non-conforming signs or signs conforming by virtue of the grandfather clause.

*History Note: Statutory Authority G.S.*

*136-130;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1988.*

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

**SUBCHAPTER 3D - LICENSE AND THEFT  
SECTION**

**SECTION .0500 - GENERAL INFORMATION  
REGARDING SAFETY INSPECTION OF  
MOTOR VEHICLE**

**.0515 SAFETY INSPECTION  
LICENSING AND PROCEDURES**

(a) The Attorney General of North Carolina has determined that publication of the complete regulations governing licensing as a North Carolina Safety Equipment Inspection Station, and the requirements and procedures for such inspections are impracticable, and that the substance of this Rule should be summarized in accordance with the provisions of G.S. 150A-63(c).

(b) The regulations and procedures governing the licensing of Safety Equipment Inspection Stations for all counties are contained in a manual entitled "Safety Equipment Emission Inspections, Windshield Certificate Replacement Regulations Manual." This manual includes all procedures and forms to be used in the process of the safety inspection required by law.

(c) Official copies of these manuals are available upon request from the Enforcement Section, Division of Motor Vehicles, Department of Transportation, 1100 New Bern Avenue, Raleigh, N. C. 27697.

*History Note: Statutory Authority G.S.*

*20-1; 20-117.1(a); 20-122; 20-122.1; 20-123.1; 20-124; 20-125.1; 20-126; 20-127; 20-128; 20-128.1; 20-129; 20-129.1; 20-130; 20-130.1; 20-130.2; 20-130.3; 20-131 through 20-134; 20-183.2; 20-183.3; 20-183.4; 20-183.5; 20-183.6; 20-183.7; 20-183.8; 150A-63(c);*

*Eff. January 1, 1983;*

*Amended Eff. November 1, 1988.*

**SECTION .0800 - SAFETY RULES AND  
REGULATIONS**

**.0801 SAFETY OF OPERATION AND  
EQUIPMENT**

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 - formerly Parts 290-298 - and amendments thereto) shall apply to all for-hire motor carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of the State of North Carolina, whether common carriers, contract carriers or exempt carriers.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall

also apply to all private motor carriers engaged in the transportation of hazardous waste and radioactive waste in interstate and intrastate commerce over the highways of the State of North Carolina.

(c) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all private motor carrier vehicles on the highways of the State of North Carolina used in commerce to transport passengers or cargo:

- (1) if such vehicle has a gross vehicle weight rating of 10,000 pounds or more; or
- (2) if such vehicle is used in the transportation of materials found to be hazardous in accordance with the Hazardous Materials Transportation Act as amended in Title 49, Code of Federal Regulations.

49 CFR Part 395.3(b) shall not apply to any private motor carrier engaged in a seasonal enterprise whenever any current seven or eight consecutive days, as defined by Part 395.2 (c) and (d), has been preceded by any 24-hour off-duty period as defined by Part 395.2(e) and the driver is on duty within a radius of 100 air miles of the point at which he reports for duty; and provided the driver has not been on duty more than 70 hours in any seven consecutive days or more than 80 hours in any eight consecutive days. 49 CFR Part 391.11 (b) (1), (b) (2), and (b) (6) shall not apply to drivers employed by private motor carriers who hold a valid North Carolina Driver's License as of June 1, 1988, or until such time that Part 383 (The Commercial Motor Vehicle Safety Act of 1986) shall be adopted by North Carolina.

49 CFR Part 395.3(b) shall not apply to any intrastate motor carrier engaged in a seasonal enterprise whenever any current seven or eight consecutive days, as defined by Part 395.2(c) and (d) has been preceded by any 24-hour off-duty period as defined by Part 395.2(e) and the driver is on duty within a radius of 100 air miles of the point at which he reports for duty; and provided the driver has not been on duty more than 70 hours in any seven consecutive days or more than 80 hours in any eight consecutive days. 49 CFR Part 391.11(b)(1), (b)(2), and (b)(6) shall not apply to drivers employed by intrastate motor carriers who hold a valid North Carolina Driver's License as of June 1, 1988, or until such time that Part 383 (The Commercial Motor Vehicle Safety Act of 1986) shall be adopted by North Carolina.

*History Note: Statutory Authority G.S. 20-384;*

*Eff. December 1, 1983;*

*Amended Eff. November 1, 1988; July 1, 1988; June 1, 1988.*

SECTION .0900 - APPROVAL OF SUN  
SCREENING DEVICES

.0904 APPROVAL AND LABELING OF  
DEVICES

(a) No devices manufactured with a luminous reflectance of more than 20 percent or a light transmittance of less than 50 percent will be approved for use on vehicles registered in this State.

(b) After approval of the device by the commissioner, each manufacturer shall provide an approved label with a means for permanent and legible installation between the device and each glazing surface to which it is applied. Each label shall contain the following information:

- (1) The name and address of the manufacturer;
  - (2) The registration number assigned to the device by the division; and
  - (3) The words, "complies with G.S. 20-127".
- (c) Each manufacturer shall include instructions with the device for proper installation, including the affixing of the label specified in Paragraph (b). The label shall be placed as required by G.S. 20-127(d).

*History Note: Statutory Authority G.S. 20-39;  
20-127;*

*Eff. January 1, 1988;*

*Amended Eff. November 1, 1988.*



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